Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

ANDRE LAMONT RAY,

Petitioner,

vs.

THE STATE OF CALIFORNIA,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of California

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is there a "community care-taking function" exception to the Fourth Amendment warrant requirement which permits police officers to enter a private residence without a warrant in non-emergency situations?

2. Does the Fourth Amendment prohibit law enforcement officers from entering a private residence without a warrant when they lack reasonable cause to believe that an emergency exists?

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OPINION BELOW

The opinion of the California Supreme Court, *People v. Ray*, 21 Cal.4th 464, 88 Cal.Rptr.2d 565, 981 P.2d 928 (1999), is reproduced in the Appendix. (App. 1.) The opinion of the California Court of Appeal, First District, Division Three, was originally reported [*People v. Ray*, 64 Cal.App.4th 868, 75 Cal.Rptr. 565 (1998)], but was later depublished by operation of the California Supreme Court's order granting review on September 23, 1998. A copy of the Court of Appeal's opinion is reproduced in the Appendix. (App. 36.) The trial court's order granting Petitioner's motion to suppress evidence was duly reported and transcribed, and a copy of that portion of the hearing transcript is also reproduced in the Appendix. (App. 54.)

JURISDICTION

The judgment of the California Supreme Court reversing the trial court's orders suppressing all evidence and dismissing the charges against Petitioner was filed on August 19, 1999. Under the Rules of the Supreme Court [hereafter "Supreme Court Rule"] 13(1) and 13(3), the time period for filing this petition extends to and includes November 17, 1999. This petition is therefore timely filed.

This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a). Under Article I, Section 28(d) of the Constitution of the State of California, the State's courts are prohibited from excluding evidence for violations of the Fourth Amendment except to the extent required by

the federal exclusionary rule. See, *In Re Lance W.*, 37 Cal.App.3d 873, 886-887, 210 Cal.Rptr. 631, 639, 694 P.2d 744, 752 (1985). Accordingly, the decision of the California Supreme Court in this case turned on that Court's construction of the federal exclusionary rule under the Fourth Amendment to the United States Constitution (as applicable to the states via the Fourteenth Amendment), and this Court has jurisdiction to review that decision pursuant to § 1257(a). (App. 1 and n. 1.) See *Arizona v. Evans*, 514 U.S. 1, 6-7, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995); *Michigan v. Long*, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983).

STATUTES AND CONSTITUTIONAL PROVISIONS

The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourteenth Amendment to the United States Constitution, Section One, provides in pertinent part that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ."

Article I, Section 28(d) of the California Constitution provides in pertinent part that "relevant evidence shall

not be excluded in any criminal proceeding, including pretrial and postconviction motions and hearings. . . . "

STATEMENT OF THE CASE

The criminal charges in this case were based upon evidence discovered by two police officers following their warrantless entry into Petitioner's residence under circumstances which a majority of the California Supreme Court found to constitute neither an exigency nor an emergency. The question presented is whether the Fourth Amendment to the United States Constitution permits officers to dispense with the warrant requirement in non-emergency situations.

On Christmas Day 1996 at approximately 3:30 p.m., Richmond Police Officers Felix Tan and Melvin Cary were dispatched to a residence at #4 Park Lane to investigate a report of an "open door." (CT 69, 74.) The dispatcher informed the officers that a neighbor reported that the residence door had apparently been open all day, that the inside of the residence was "a shambles," that the neighbor did not know but thought that no one was home, and that the reporting party was available to speak with if the officers desired. (CT 82, 88, 100-101, 110; RT 30.) The officers understood that the dispatch call was a *"report of an open door,"* that the reporting party believed that the door had been *open all day* and that it was believed that *no one was home*. (CT 69:13; 74:6-8; 82:10-19; 110:18-23; RT 30, emphasis added.)

Officer Tan arrived at the location about 6 minutes later, and Officer Melvin Cary arrived shortly thereafter.

(CT 66, 82-83, 109-110.) Both officers were relatively inexperienced, Tan having been an officer for less than a year and Cary for less than 2 years. (CT 68; RT 15.) The reporting party was present at the scene when Tan and Cary arrived, but the officers did not stop to speak with him. (CT 112-113; RT 20-21.)[1] After briefly conferring with each other, the officers decided to knock and announce on the front door and then to enter the residence if no one answered. (CT 110; RT 24.) The officers proceeded to the front door of #4, which was ajar about 1½ feet. (CT 75, 104.)

The officers observed no signs of forced entry. (CT 87.) Nor did they observe any indications that someone was inside the residence, described as a small 2-story townhouse approximately 25 feet wide and 20 feet deep. (CT 52-54.) Officer Tan testified that as he stood at the front door he noticed that the inside of the residence was messy. (CT 75; RT 26.)[2] At some point, Officer Tan noted

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[1] Had the officers taken the time to talk to the reporting party, they would have learned that he was not personally aware of the situation with regard to #4 Park Lane, that another neighbor had "just brought it to [his] attention" and that the other neighbor had said that "the door has been open all morning" and that "the inside looks like a shambles and there hasn't been anybody around." (CT 173.)

[2] In the trial court, Petitioner argued that the court should reject Tan's testimony that he observed a mess inside the apartment *before* he entered as a convenient *post hoc* fabrication because his two contemporaneous reports reflected no such observation; and Officer Cary testified that he did not notice a mess. (CT 84, 98, 110, 135, n. 2; RT 31.) Apparently agreeing with that contention, the trial court found that the information available to the officers before entering was that "a door had

that an expensive looking television and stereo sat conspicuously near the front door, and neither appeared to have been disturbed. (RT 30.) Officer Tan then knocked on the front door and yelled that they were from the Richmond Police Department. (CT 76-77.) Hearing no response, the officers entered the residence to conduct what they described as a "security check" to see if anyone inside might be injured, disabled and unable to summon help, or deceased. (CT 85-86, 111.)

During the course of their incursion into the premises, the officers observed suspected crack cocaine and a large amount of cash. (CT 78-80.) Based upon those observations, Officer Michael Scalercio subsequently applied for and obtained a search warrant, which was executed later that same night. (CT 6-7, 50-51, 56.) Petitioner arrived home while the officers were executing the warrant. He was arrested and charged by complaint with possessing cocaine and cocaine base for sale, and with manufacturing the latter, in violation of California Health and Safety Code §§ 11351, 11351.5 and 11379.6.

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been open all day," that "the persons who were the occupants of the premises had not been there, and the place was in shambles." (RT 41.) See dissenting opinion of Mosk, J. (App. 27 and n. 1.)

HOW THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

1. The Trial Court Proceedings.

On January 29, 1997, a preliminary examination was held during which RAY moved to suppress all evidence on the grounds that the initial warrantless entry into his residence violated the Fourth Amendment, as applicable through the Fourteenth Amendment. (CT 1, 3-5.)[3] At the conclusion of the hearing, the magistrate granted the motion to suppress and the charges were dismissed. (CT 133, n. 1.)

On February 19, 1997, RAY was indicted on essentially the same charges. (CT 123.) Petitioner again moved to suppress all evidence seized under the search warrant on the grounds that the warrant was tainted by the officers' previous unlawful entry into his residence. (CT 131.) The prosecution opposed the motion, asserting that exigent circumstances justified the officers' entry. After hearing the evidence, the trial court found that the information available to the officers before they entered the residence was "that a door had been open all day, that the persons who were the occupants of the premises had not been there, and that the place was in shambles." (App. 4, 56.) Emphasizing that "the constitution is very

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[3] All citations denoted "CT" are to the Clerk's Transcript on Appeal. All citations denoted "RT" are to the Reporter's Transcript of the suppression hearing. At that suppression hearing, the parties stipulated that the prior testimony of Officers Michael Scalercio, Felix Tan, and Melvin Cary at the preliminary examination in Bay Municipal Court Case No. 96-266683 (CT 1-122) should be made a part of the record. (RT 5.)

clear about how it protects people's homes," the court ruled that "on the facts of this case, there was [in]sufficient information [that] would justify the officer to believe that an exigent circumstance was taking place *at that point.*" (App. 4, 56, emphasis added.)

The prosecution appealed. (CT 181.)

2. The Court Of Appeal's Decision.

Reversing the trial court's ruling, the court of appeal stated that the "case turns on what showing is required to establish the existence of exigent circumstances" and then held that reasonable suspicion was the appropriate standard. (App. 40, 50.) Recognizing that under the circumstances Officers Cary and Tan could not think it was likely that the perpetrators of a crime might still be inside the premises, the court nevertheless ruled that "it was reasonable to believe that there may be individuals inside who were either injured or in need of assistance." (App. 50-51.) Thus, the court held that "the officers reasonably suspected that an exigency existed requiring their immediate warrantless entry." (App. 51.)

3. The Decision Of The California Supreme Court.

The California Supreme Court granted review. By a six to one majority, the Court ruled that the officers' warrantless entry into Petitioner's residence was reasonable under the Fourth Amendment. (App. 1-35.) However, a majority of the Justices could not reach consensus on a single theory to justify that conclusion. In the lead plurality decision, authored by Justice Janice Brown,

three Justices agreed with the trial court that "[the officers] had no knowledge of any facts that would lead a reasonable person in their position to believe entry was immediately necessary to aid life or limb." (App. 10.) Nevertheless, these Justices found that the warrantless entry was reasonable under a newly pronounced, so-called "community caretaking" exception to the warrant requirement of the Fourth Amendment. (App. 16-17.)

In a second plurality opinion concurring in the result, authored by Chief Justice Ronald George, three Justices eschewed both the lead opinion's newly proposed exception to the warrant requirement and the trial court's ruling that the officers did not confront an emergency. (App. 23.) Instead, these Justices held that the officers' entry was reasonable under the exigent circumstances exception "because the officers had reasonable cause to believe a burglary was in progress or that a burglary had been committed and there might be persons inside the residence in need of assistance." (App. 25.)

Finally, Justice Stanley Mosk dissented. (App. 26.) Rejecting both theories espoused by the plurality opinions, Justice Mosk wrote that the warrantless entry was not "justifiable either under the exception for exigent circumstances or because, as the lead opinion concludes, the police were exercising a 'community caretaking function.' " (App. 26.) Thus, although a majority of four justices agreed that the case did not involve an emergency or exigent circumstances, and a different majority of four Justices declined to embrace the so-called "community caretaking exception" to the warrant requirement, the Court nevertheless affirmed the court of appeal and reversed the trial court's order suppressing the evidence.

REASONS FOR GRANTING THE WRIT

I. Introduction

This Court has repeatedly noted that "[t]he physical entry of the home is the *chief evil* against which the wording of the Fourth Amendment is directed . . . " [*New York v. Harris*, 495 U.S. 14, 18, 110 S.Ct. 1640, 1643, 109 L.Ed.2d 13 (1990), quoting *Payton v. New York*, 445 U.S. 573, 585, 100 S.Ct. 1371, 1379, 63 L.Ed.2d 639 (1980) (emphasis added), quoting *United States v. United States District Court*, 407 U.S. 297, 313, 92 S.Ct. 2125, 2137, 32 L.Ed.2d 752, 757 (1972)], and has held that a police officer's entry into a private residence "is *per se* unreasonable, unless the police can show that it falls within one of a carefully defined set of exceptions." *Coolidge v. New Hampshire*, 403 U.S. 443, 474, 99 S.Ct. 2022, 2044, 29 L.Ed.2d 564 (1971). These exceptions are "few in number and carefully delineated." *Welsh v. Wisconsin*, 466 U.S. 740, 749, 104 S.Ct. 2091, 2097, 80 L.Ed.2d 732, 734 (1984), quoting *United States District Court*, 407 U.S. at 318, 92 S.Ct. at 2137, 32 L.Ed.2d at 757. In fact, this Court has expressly acknowledged "only a few such emergency conditions" when the officers' intent is to effect a search or arrest – i.e., hot pursuit of a fleeing felon, destruction of evidence, need to prevent a suspect's escape, danger to the police or other persons inside or outside the dwelling, and an ongoing fire. *Minnesota v. Olson*, 495 U.S. at 100, 110 S.Ct. at 1684, 109 L.Ed.2d at 85; *Welsh v. Wisconsin*, 466 U.S. at 749, 104 S.Ct. at 2091, 80 L.Ed.2d at 734.

These same principles grant the police reasonable authority to respond immediately to perceived emergencies inside a home, without first obtaining a warrant. As this Court has explained:

> We do not question the right of the police to respond to *emergency situations*. Numerous state [footnote omitted] and federal [footnote omitted] cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they *reasonably believe* that a person within is in *need* of *immediate aid*. . . . "The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency." [Citation omitted.] And the police may seize any evidence that is in plain view during the course of their legitimate emergency activities. [Citation omitted.]

Mincey v. Arizona, 437 U.S. 385, 392, 98 S.Ct. 2408, 2413, 57 L.Ed.2d 290 (1978) (emphasis added). See also *Flippo v. West Virginia*, ___ U.S. ___, 120 S.Ct. 7, 8, ___ L.Ed.2d ___ (1999) ("police may make warrantless entries onto premises if they reasonably believe a person is in need of immediate aid. . . . "). As elaborated below, *Mincey* has been said to stand for a so-called "emergency aid doctrine," which is distinguished from the traditional concept of "exigency" in the sense that it does not require probable cause to believe that a crime has occurred, but turns instead simply on the question whether the circumstances suggest an emergency exists. See, e.g., *Sheik-Abdi v. McClellan*, 37 F.3d 1240, 1244 (7th Cir. 1994), *cert. denied*, 513 U.S. 1128 (1995) (entry to assist paramedics treating an intoxicated man); *United States v. Moss*, 963 F.2d 673,

678 (4th Cir. 1992); *Wayne v. United States*, 318 F.2d 205, 212, 115 U.S.App.D.C. 234, 241 (D.C.Cir. 1963); *New York v. Mitchell*, 39 N.Y.2d 173, 177-178, 383 N.Y.S.2d 246, 347 N.E.2d 607, *cert. denied*, 426 U.S. 953, 96 S.Ct. 3178, 49 L.Ed.2d 1191 (1976) (three part test for determining whether warrantless entry is justified by an "emergency"). See generally, 3 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment*, § 6.6(a), pp. 389-402 (3d ed. 1996) (hereafter, "*LaFave*").[4]

In this case, a majority of the California court agreed with the trial court's finding that the police officers "had no knowledge of any facts that would lead a reasonable person in their position to believe that entry was immediately necessary to aid life or limb." (App. 10.) Under *Welsh* and *Mincey*, this pronouncement mandated an order affirming the trial court's suppression order. In reaching the contrary conclusion, the lead plurality opinion relied on several decisions from other states for the proposition that there is a "community caretaking" exception to the warrant requirement of the Fourth Amendment. Springing far beyond the holding of even those cases, the lead plurality dispensed with the requirement that warrantless entries be justified by facts suggesting an emergency, invoking instead a general

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[4] In *Mincey*, this Court cited several decisions from state and federal courts as illustrative of the emergency exception to the warrant requirement. In each of those cases, the courts articulated a doctrine embedded in the concepts of urgent need for immediate assistance; and none of them suggested the possibility of a non-emergency exception arising from police officer's so-called "community caretaking function." *Mincey*, 437 U.S. at 392, n. 6 and 7, 98 S.Ct. at 2413, 57 L.Ed.2d at 290.

standard of reasonableness which questions whether "[g]iven the known facts, would a prudent and reasonable officer have perceived a need to act in the proper discharge of his or her community caretaking functions?" (App. 16.)

This proposed community caretaking doctrine would constitute a corrosive exception to the warrant requirement that would threaten to swallow the entire rule. First, by divorcing the concepts of immediacy and emergency from the test of reasonableness for a warrantless entry, the proposed exception would eliminate fundamental safeguards against governmental intrusion into the privacy of our homes while, at the same time, virtually eliminating all meaningful guidance for police officers in the field regarding what the law does or does not permit. Second, because the doctrine would posit a different and more amorphous standard of reasonableness when officers are supposedly conducting a community caretaking function, as opposed to investigating crime, its adoption would result in confusion for both courts and officers. Third, the doctrine would permit officers to dispense with the warrant requirement by invoking concern for a possible victim of a crime under investigation, even where, as here, they lack probable cause to believe that a crime was committed and the circumstances do not reasonably suggest an emergency. Finally, and perhaps most objectionably, the doctrine would invite paternalistic governmental intrusions into our homes to conduct (in the words of the officers in this case) a "security check," to make sure that everything was all right. (App. 3, 18.)

By contrast, the traditional exigency and emergency doctrines vest police officers with the authority and flexibility to respond to those in urgent need, establish clear rules for officers in the field as they respond to changing and ambiguous circumstances, require no evaluation of the officer's subjective intent (criminal investigation versus community caretaking), and ensure that warrantless intrusions into the home are restricted to those exceptional situations in which immediate action is mandated. For these reasons, this Court should seize the opportunity presented by this case to establish that the Fourth Amendment precludes police officers from conducting a warrantless entry into a residence absent emergency or exigent circumstances.

I. This Court's Precedent Does Not Support the Plurality Opinion's Proposed Community Caretaking Exception

The concept of police officers' community caretaking functions, as relevant to the reasonableness of Fourth Amendment intrusions, derives from this Court's decision in *Cady v. Dombrowski*, 413 U.S. 433, 441, 93 S.Ct. 2523, 2528, 37 L.Ed.2d 706, 714-715 (1973). There, the Court reviewed the reasonableness of an officer's intrusion into the trunk of an automobile, which the police had previously towed to an unguarded storage facility following a car accident, for the purpose of securing a revolver which the officer had reason to believe was inside. It was undisputed that the officer's search of the trunk was conducted pursuant to "standard procedure [of the] department." *Cady*, 413 U.S. at 437, 93 S.Ct. at 2526, 37 L.Ed.2d at 712.

Before evaluating the reasonableness of the search of the car trunk, the Court's majority opinion made several general observations concerning the frequent contacts that private citizens have with local police officers in the context of driving automobiles, as opposed to "police-citizen contact in the home or office." *Cady*, 413 U.S. at 441, 93 S.Ct. at 2528, 37 L.Ed.2d at 714.

> Local police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as *community caretaking functions*, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.

Cady, 413 U.S. at 441, 93 S.Ct. at 2528, 37 L.Ed.2d at 714-715 (emphasis supplied). The Court then explained that the greater frequency of contact between police and private citizens in non-investigatory contexts is one reason why citizens have a reduced expectation of privacy in their vehicles:

> The constitutional difference between searches of and seizures from houses and similar structures and from vehicles stems both from the ambulatory character of the latter and from the fact that extensive, and often noncriminal contact with automobiles will bring local officials in 'plain view' of evidence, fruits, or instrumentalities of a crime, or contraband. [Citation omitted.]

Cady, 413 U.S. at 442, 93 S.Ct. at 2528, 37 L.Ed.2d at 715.

Turning to the merits, the Court majority emphasized two undisputed facts: (1) that at the time of the search of

the trunk, the police had already exercised control over the vehicle (by towing it to a storage facility), and (2) that search of the trunk was conducted pursuant to standard department procedures "to protect the public from the possibility that a revolver would fall into untrained or perhaps malicious hands." *Cady*, 413 U.S. at 442, 93 S.Ct. at 2528, 37 L.Ed.2d at 715. Once again noting "the distinction between motor vehicles and dwelling places," the majority held that "the type of caretaking 'search' conducted here of a vehicle that was neither in custody nor on the premises of its owner, and that had been placed where it was by virtue of lawful police action . . . was not 'unreasonable' within the meaning of the Fourth and Fourteenth Amendments." *Cady*, 413 U.S. at 448, 93 S.Ct. at 2531, 37 L.Ed.2d 718.

Consistent with *Cady*'s repeated distinction between "motor vehicles and dwelling places," this Court has never suggested that the police officers' community caretaking functions might affect, let alone reduce, the level of protection that the Fourth Amendment provides against governmental intrusion to a private citizen in his or her home. Instead, after *Cady*, the Court has relied on police officers' community caretaking functions on only two occasions – both times in the context of inventory searches of automobiles lawfully in police custody. See *South Dakota v. Opperman*, 428 U.S. 364, 368, 96 S.Ct. 3092, 3097, 49 L.Ed.2d 1000, 1005 (1976) ("in the interests of public safety and as part of what the Court has called 'community caretaking functions,' [citing *Cady*], automobiles are frequently taken into police custody."); *Colorado v. Bertine*, 479 U.S. 367, 381, 107 S.Ct. 738, 746, 93

L.Ed.2d 739, 751 (1987) ("Inventory searches are not subject to the warrant requirement because they are conducted by the government as part of a 'community caretaking' function. . . . ").

Similarly, in line with the rationale of *Cady*, the federal courts of appeal have repeatedly invoked the community caretaking function to justify automobile searches and, in a few instances, searches or seizures in analogous situations involving reduced expectations of privacy, while consistently rejecting assertions that community caretaking exception could justify warrantless entries into a private residence by police officers. See *United States v. Pichany*, 687 F.2d 204, 209 (7th Cir. 1982) (rejecting application of a community caretaking exception to a warehouse while stating that the Court in *Cady* "intended to confine the holding to the automobile exception and to foreclose expansive construction of the decision allowing warrantless search of private homes or businesses."); *United States v. Bute*, 43 F.3d 531, 535 (10th Cir. 1994) (citing *Pichany* and stating that "[w]e agree with this line of authority holding the community caretaking exception to the warrant requirement is applicable only to cases involving automobile searches. Thus, we conclude that the community caretaking exception to the warrant requirement is inapplicable under the facts of this case."); *United States v. Erickson*, 991 F.3d 529, 532 (9th Cir. 1993) (relying on *Pichany* and holding that the community caretaking exception does not apply to a warrantless entry into a home).[5]

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[5] Compare *United States v. Castro*, 166 F.3d 728, 734 (5th Cir. 1999) (holding that the officer's community caretaking function

The community caretaking exception proposed by the lead plurality opinion of the California Supreme Court in this case is completely dislodged from the doctrine's moorings in *Cady*. A person's privacy interests in his home can never be analogous to those in his car, let alone to those in a car in police custody. The home is the central focus and heartland of our private lives. For that reason, and in stark contrast to the impoundment and inventory of a car, the government's physical entry of the home, for whatever purpose, remains "the chief evil against which the wording of the Fourth Amendment is directed . . . " *Harris*, 495 U.S. at 18, 110 S.Ct. at 1643, 109 L.Ed.2d at 13. Nor is a person's privacy interest in his home diminished in any manner simply because a police officer desires to enter it in a non-investigatory capacity for "[i]t is surely anomalous to say that the individual . . . is fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." *Camara v. Municipal Court*, 387 U.S. 523, 530, 87 S.Ct. 1727, 1731, 18 L.Ed.2d 930, 936 (1967). See also *Erickson*, 991 F.2d at 531-532. To the contrary, "even the most law-abiding citizen has a very tangible interest in limiting the

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justified impoundment and inventory of car under *Opperman*); *Smith v. Thornburg*, 136 F.3d 1070, 1075 (6th Cir. 1998) (warrantless entry into car abandoned in private garage complex with engine running in midst of a crowd justified by community caretaking function to protect public); *United States v. Ponce*, 8 F.3d 989, 996 (5th Cir. 1993) (community caretaking function justified impoundment of vehicle in public parking lot where it might become a nuisance or could be damaged or stolen); *United States v. Lugo*, 978 F.2d 631, 635 (10th Cir. 1992) (community caretaking function justified entry into truck to seize gun shortly after driver's arrest).

circumstances under which the sanctity of his home may be broken by official authority." *Id.*, 387 U.S. at 530-531, 87 S.Ct. at 1732, 18 L.Ed.2d at 936. Thus, the fatal flaw in the lead plurality opinion is its failure to recognize that a police officer's benign purpose does not in any way affect the resident's fundamental interest in having the officer pursue that purpose outside the confines of his home except where an apparent emergency mandates immediate action.

This is not to suggest the governmental interest for the intrusion is irrelevant to the question of reasonableness under the Fourth Amendment. As this Court long ago established, the general test for reasonableness under the Fourth Amendment is always a "balancing [of] the need to search against the invasion which the search entails." *Camara*, 387 U.S. at 536-537, 87 S.Ct at 1735, 18 L.Ed.2d at 940. But as *Camara* also recognized, the fact that the governmental purpose for an intrusion into the home is not to conduct a criminal investigation but rather to accomplish a "less hostile" goal, such as the enforcement of minimal health code requirements contained in a city ordinance, does not eliminate the warrant requirement. Even allowing for the significant difference in the anticipated disruption for the homeowner who is subjected to a health inspection program, as opposed to one who is the target of a criminal search, the Court nevertheless insisted that the fundamental nature of the intrusion mandated a warrant, absent "emergency situations." *Camara*, 387 U.S. at 534 and 539, 87 S.Ct at 1733 and 1736, 18 L.Ed.2d at 939 and 941. On the other hand, this Court held that the distinction between the two types of intrusions *was* relevant to the nature and quantum of evidence that could justify the intrusion: "Where considerations of

health and safety are involved, the facts that would justify an inference of 'probable cause' to make an inspection are clearly different from those that would justify such an inference where a criminal investigation has been undertaken." *Camara*, 387 U.S. at 534 and 539, 87 S.Ct at 1733 and 1736, 18 L.Ed.2d at 940. Thus, the Court held that the "probable cause to issue a warrant to inspect" would exist under a standard less rigorous than that required for a criminal search warrant. *Camara*, 387 U.S. at 538-539, 87 S.Ct at 1736, 18 L.Ed.2d at 941.

II. The Decisions From Other States Do Not Support The Plurality Opinion's Proposed Community Caretaking Exception

By embracing a rule which would eliminate the prerequisite of an emergency for a broad spectrum of police warrantless entries into homes generally classified as community caretaking functions, the lead plurality opinion strayed from the mandate of the Fourth Amendment and from this Court's consistent precedent. At the same time, the lead plurality opinion's proposed rule would leap frog the holdings of similar cases from other states, including those upon which plurality purported to rely. See *State v. Alexander*, 124 Md.App. 258, 277, 721 A.2d 275, 285 (1998) ("the question is whether there were 'reasonable grounds to believe that some kind of an emergency existed,' that is, whether there is 'evidence which would lead a prudent and reasonable official to see a need to act.' ");[6] *People v. Davis*, 442 Mich. 1, 25, 497 N.W.2d 910,

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[6] The lead plurality opinion actually quoted from this portion of the *Alexander* decision but conspicuously omitted the

921 (1993) ("we hold that police may enter a dwelling with a warrant when they reasonably believe that a person within is in need of immediate aid."); *State v. Carlson*, 548 N.W.2d 138, 141 (Iowa 1996) (test is whether "a reasonable person under the circumstances would have thought an emergency . . . existed."); *State v. Will*, 131 Or.App. 498, 502-503, 885 P.2d 715, 718 (1994) ("The Oregon Supreme Court has recognized the emergency aid doctrine but has not applied it where the facts do not satisfy the threshold requirement that an emergency is a 'true emergency,' " quoting *State v. Bridewell*, 306 Or. 231, 237, 759 P.2d 1054, 1058 (1988)). See also *Mitchell*, 39 N.Y.2d at 177-178, 383 N.Y.S.2d at 248, 347 N.E.2d at 609 (holding that under the emergency doctrine (1) the police must have reasonable grounds to believe there is an emergency at hand and an immediate need for their assistance for the protection of life or property; (2) the search must not be primarily motivated by intent to arrest and seize evidence; and (3) there must be some reasonable basis, approaching probable cause, to associate the emergency with the area or place to be searched.).

Consistent with all of these authorities, we submit that the test to determine the reasonableness of an officer's decision to enter a residence without a warrant should be the same, regardless whether the officer intends to pursue a criminal investigation, come to the aid of a person in need, or do both. Whatever their

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language concerning "reasonable grounds to believe that some kind of an emergency existed." (App. at 14-15.) Similarly the lead plurality opinion made no mention of the above-quoted language from *Davis*, *Carlson*, and *Will*. (App. 12-13 and n. 3.)

purpose, police officers must not be permitted to cross "the firm line at the entrance to the house" that has been drawn by the Fourth Amendment [*Payton*, 445 U.S. at 590, 100 S.Ct. at 1382, 63 L.Ed.2d 639] absent a reasonable belief "that a person within is in need of immediate aid." *Mincey*, 437 U.S. at 392, 98 S.Ct. at 2413, 57 L.Ed.2d at 290.

Following *Mincey* and *Camara*, we assert that the applicable standard to determine whether an officer reasonably believed an emergency existed should be probable cause, not reasonable suspicion. See also *Olson*, 495 U.S. at 100-101, 110 S.Ct. at 1690, 109 L.Ed.2d at 95 (noting that the Minnesota Supreme Court "thought that in the absence of hot pursuit there must be at least probable cause to believe that one or more of the other factors justifying the entry were present . . . " and stating that "[w]e are not inclined to disagree with this fact-specific application of the proper legal standard.") However, on the record of this case the Court need not reach the question whether probable cause or reasonable suspicion governs the inquiry, because as a majority of the California Supreme Court expressly found, the officers in this case did not reasonably suspect that they confronted an emergency. (App. 10, 26.) Accordingly, under either standard, probable cause or reasonable suspicion, the officers' entry into Petitioner's residence was unreasonable.

CONCLUSION

For the reasons stated, the Petition for a writ of certiorari should be granted, the judgment of the California Supreme Court should be reversed, and the case should be remanded for further proceedings.

DATED: November 17, 1999

Respectfully submitted,

COOPER, ARGUEDAS & CASSMAN
TED W. CASSMAN

APPENDIX

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE, Plaintiff and Appellant, v. ANDRE LAMONT RAY, Defendant and Respondent.	S071999 Ct. App. 1/3 A077757 Contra Costa County Super. Ct. No. 970311-7 (Filed Aug. 19, 1999)

In the average day, police officers perform a broad range of duties, from typical law enforcement activities – investigating crimes, pursuing suspected felons, issuing traffic citations – to "community caretaking functions" – helping stranded motorists, returning lost children to anxious parents, assisting and protecting citizens in need – "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." (*Cady v. Dombrowski* (1973) 413 U.S. 433, 441.) When performing their law enforcement responsibilities, officers are required under the Fourth Amendment to obtain a warrant before searching a house or seizing personal effects;[1] or it must be established they acted

[1] The Fourth Amendment to the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

SEE CONCURRING AND DISSENTING OPINIONS

pursuant to a recognized exception. In this case, we address the extent to which the Fourth Amendment operates when the police are discharging one of their community caretaking functions. We conclude under these facts that the officers acted reasonably to protect the safety and security of persons and property when they briefly entered defendant's residence without a warrant and then observed contraband in plain view. Accordingly, we affirm the judgment of the Court of Appeal holding that the trial court should not have suppressed the evidence.

Factual and Procedural Background

About 3:30 p.m. on Christmas Day 1996, Officers Tan and Cary of the Richmond Police Department received the following dispatch: "An open door at 4 Park Lane, number 4 Park Lane. PR [person reporting] says that the door has been open all day and it's all a shambles inside. It's unknown if anyone's home but the PR doesn't think so. The PR can be contacted if necessary." Tan arrived at the location within five minutes. At the time, he "was concerned for possibly the life and property on the inside of the house, welfare of the people inside." Cary arrived about two minutes later and observed the reporting person pointing to the residence in question. The officers approached the front door, which was open approximately two feet. In Cary's experience, this circumstance correlated to a "95 percent" likelihood they had encountered a burglary or similar situation.

Looking inside, Tan saw "clothing, paper, strewn on the ground, on the sofa. It was just a real mess inside; [it] looked like someone had gone through the house." In

Cary's estimation, "the front room appeared to be ransacked as if someone went through it." Although there were no signs of forced entry, their observations heightened both officers' initial apprehension: "It appeared that someone might have been inside, a burglary attempt or in the progress, or the welfare [sic] of the people inside." The officers knocked several times, loudly announcing their presence, but received no response. Increasingly concerned, they entered to conduct a security check "to see if anyone inside might be injured, disabled, or unable to obtain help" and to determine whether a burglary had been committed or was in progress. They found no one inside but did observe a large quantity of suspected cocaine and money in plain view. No interior doors or containers were opened, and they did not touch anything. Tan and Cary left the residence and informed their supervisor of their observations, which formed the basis of a subsequent search warrant. Evidence seized pursuant to the warrant led to charges against defendant of possessing more than 10 kilograms of cocaine (Health & Saf. Code, §§ 11351, 11370.4), possessing cocaine base for sale (*id.*, § 11351.5), and manufacturing a controlled substance (*id.*, § 11379.6, subd. (a)).

Defendant moved to suppress the evidence because the officers did not have a warrant when they initially entered his residence. The prosecution attempted to justify their action on exigent circumstances. At the conclusion of the suppression hearing, the superior court found: "This is one of those types of situations where I don't believe that the police officers acted improperly in the sense that they were performing a community service or community value. That's what they are there to do. And

when doors are open, we will hope that they will take some steps to find out what is going on. [¶] . . . [¶] The testimony which has been presented to me would indicate that these officers were aware that a door had been open all day. That the person[s] who were the occupants of the premises had not been there, and that the place was in shambles. Those are the major portions of the information they had. [¶] . . . [¶] . . . [¶] I don't feel on the facts of this case, there was sufficient information [that] would justify the officer to believe that an exigent circumstance was taking place at that point. . . . [¶] It's one of those situations, I think, where it's not uncommon where people leave their doors open. And we commend the officers for at least doing their community service to try to protect people and help people. But there are going to be situations where in fact in doing that they are going to come inside and discover evidence of a crime. And it's going to turn out unfortunately it is not admissible. And I think this is one of those situations. [¶] I do not in any way think that the officers were necessarily wrong in what they did, but if we are going to get into a situation where you are going to prosecute somebody for a crime in this situation, I think they needed to get a search warrant. Motion is granted."

On appeal, the controversy centered on whether the warrant exception for exigent circumstances required a showing of probable cause or reasonable suspicion. Reviewing pertinent case authority, the Court of Appeal struck a balance in favor of reasonable suspicion. "While probable cause is too onerous a standard, a warrantless entry justified by a reasonable suspicion of exigency permits a balance between the need for prompt action and

the right to be free from unreasonable governmental intrusion." Since the record established "the officers reasonably suspected that an exigency existed requiring their immediate warrantless entry," the court reversed the suppression ruling. In reaching this conclusion, it noted the tension between the trial court's finding that "the officers were acting properly in their roles as community caretakers and had done nothing wrong" and the deterrent effect of excluding the evidence. (See, e.g., *United States v. Leon* (1984) 468 U.S. 897, 918-921.)

We granted defendant's petition for review.

Discussion

Both the trial court and the Court of Appeal analyzed the facts and law under the exigent circumstances exception to the Fourth Amendment warrant requirement (see, e.g., *Schmerber v. California* (1966) 384 U.S. 757, 770-771; *McDonald v. United States* (1948) 335 U.S. 451, 456), reaching different conclusions as to the standard by which exigency should be assessed. On review, the Attorney General urges this court to affirm the Court of Appeal on the basis of the "emergency aid" exception, which he characterizes as a variant of exigent circumstances.[2] (See

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[2] Defendant contends the People are precluded from proffering this justification because they failed to raise it below. (See Cal. Rules of Court, Rule 29(b); see also, e.g., *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 865, fn. 4.) A review of the record contradicts this assertion. In their written response to the motion to suppress in the superior court, the People specifically contended, "TO THE EXTENT THERE IS A 'COMMUNITY CARETAKING FUNCTIONS' EXCEPTION THE PEOPLE

3 LaFave, Search and Seizure (3d ed.1996) § 6.6(a), p. 390, fn. 5 (3 LaFave).)

Under the emergency aid exception, police officers "may enter a dwelling without a warrant to render emergency aid and assistance to a person they reasonably believe to be in distress and in need of that assistance." (*Root v. Gauper* (8th Cir. 1971) 438 F.2d 361, 364-365.) " 'The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.' [Citation.] And the police may seize any evidence that is in plain view during the course of their legitimate emergency activities. [Citations.]" (*Mincey v. Arizona* (1978) 437 U.S. 385, 392-393, fns. omitted; *Wayne v. United States* (D.C. Cir. 1963) 318 F.2d 205, 212; see generally, 3 LaFave, *supra*, § 6.6(a), p. 390.)

Contrary to the view of the Attorney General, however, the emergency aid doctrine is not a subcategory of the exigent circumstances exception to the warrant

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HEREBY ASSERT IT (*CADY V. DOMBROWSKI*, 413 U.S. 433 . . . (1973).)" The trial court did not expressly rule on this argument; nevertheless, the People's contention and citation was sufficient to preserve review by putting defendant on notice of the prosecution's various theories of justification. (Cf. *People v. Williams* (1999) 20 Cal.4th 119, 137-138.) Moreover, although the community caretaker function is conceptually distinct from exigent circumstances, the record suffices to address the issue as a question of law. (See *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, 6; see also *People v. Hill* (1974) 12 Cal.3d 731, 754, overruled on other grounds in *People v. De Vaughn* (1977) 18 Cal.3d 889, 896 [addressing emergency aid doctrine even though People relied solely on "hot pursuit"].)

requirement. Rather, it is a subcategory of the community caretaking exception, a distinctly different principle of Fourth Amendment jurisprudence. "When the police act pursuant to the exigent circumstances exception, they are searching for evidence or perpetrators of a crime. Accordingly, in addition to showing the existence of an emergency leaving no time for a warrant, they must also possess probable cause that the premises to be searched contains such evidence or suspects. [Citations.] In contrast, the community caretaker exception is only invoked when the police are not engaged in crime-solving activities." (*People v. Davis* (1993) 442 Mich. 1, 24 [497 N.W.2d 910]; *State v. Carlson* (Iowa 1996) 548 N.W.2d 138, 141; see also *People v. Gardner* (1984) 121 Ill.App.3d 464, 468-470 [459 N.E.2d 676]; *State* ex rel. *Zander v. District Court* (1979) 180 Mont. 548, 553-554 [591 P.2d 656].) With respect to Fourth Amendment guaranties, this is the key distinction: "the defining characteristic of community caretaking functions is that they are totally unrelated to the criminal investigation duties of the police." (*People v. Davis, supra,* 442 Mich. at p. 22; see *post,* fn. 4.) Upon entering a dwelling, officers view the occupant as a potential victim, not as a potential suspect.

Professor LaFave discusses at some length the distinction between entering premises with the intent of investigating suspected or known crimes and entering for other reasons. "Preceding sections of this Chapter have been concerned with the entry of private premises by police for the purpose of arresting a person thought to be within or for the purpose of finding the fruits, instrumentalities or evidence of some past crime. Although it is entries for those purposes which most often give rise to a

motion to suppress, requiring a ruling upon the validity of the entry and subsequent conduct of the police, quite clearly police have occasion to enter premises without a warrant for a variety of other purposes. The police have 'complex and multiple tasks to perform in addition to identifying and apprehending persons committing serious criminal offenses'; by design or default, the police are also expected to 'reduce the opportunities for the commission of some crimes through preventive patrol and other measures,' 'aid individuals who are in danger of physical harm,' 'assist those who cannot care for themselves,' 'resolve conflict,' 'create and maintain a feeling of security in the community,' and 'provide other services on an emergency basis.' An entry . . . for such reasons as these may sometimes result in the discovery of evidence of crime, in which case a determination of the lawfulness of such police activity is required." (3 LaFave, *supra*, § 6.6, pp. 389-390, fns. omitted.)

This latter-day role of law enforcement differs decidedly from the concerns that prompted the framers of our Constitution to adopt the Fourth Amendment – use of the abhorred general warrants to suppress political and religious nonconformity and reliance on writs of assistance to search indiscriminately homes and businesses for suspected contraband. (See *State v. Bridewell* (1988) 306 Or. 231, 241-252 [759 P.2d 1054] (conc. and dis. opn. of Peterson, C.J.).) Moreover, "[o]ur [contemporary] society . . . is an impersonal one. Many of us do not know the names of our next-door neighbors. Because of this, tasks that neighbors, friends or relatives may have performed in the past now fall to the police." (*Id.* at p. 254.) Local police "should and do regularly respond to

requests of friends and relatives and others for assistance when people are concerned about the health, safety or welfare of their friend, loved ones and others." (*Id.* at p. 240, fn. 1.)

Courts refer to these diverse police duties and responsibilities collectively as "community caretaking functions." (See, e.g., *State v. Alexander* (1998) 124 Md.App. 258, 267 [721 A.2d 275]; *People v. Davis, supra,* 442 Mich. at pp. 23-25 *State v. Bridewell, supra,* 306 Or. at pp. 252-254 (conc. and dis. opn. of Peterson, C.J.); see also *Cady v. Dombrowski, supra,* 413 U.S. at p. 441.) Nonetheless, "[w]hile categorizing these different activities under the heading of 'community caretaking functions' may be useful in some respects, it does not follow that all searches resulting from such activities should be judged by the same standard. Community caretaking activities are varied and are performed for different reasons." (*People v. Davis, supra,* 442 Mich. at p. 25.) Each variant must be assessed according to its own rationale on a case-by-case basis. "Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context in which a search takes place." (*New Jersey v. T.L.O.* (1985) 469 U.S. 325, 337.)

We agree with defendant that the People did not meet their burden of establishing circumstances warranting the officers' actions under the emergency aid component of community caretaking. This justification requires specific, articulable facts indicating the need for " 'swift action to prevent imminent danger to life or serious damage to property. . . . ' [Citation.]" (*People v. Duncan* (1986) 42 Cal.3d 91, 97.) The record fails to meet this standard.

The officers were concerned for the possibility of an injured person inside the residence but had no knowledge of any facts that would lead a reasonable person in their position to believe entry was immediately necessary to aid life or limb. (See *People v. Davis, supra,* 442 Mich. at pp. 27-28.)

This determination does not end our inquiry, however. Under the community caretaking exception, circumstances short of a perceived emergency may justify a warrantless entry, including the protection of property, as "where the police reasonably believe that the premises have recently been or are being burglarized." (3 LaFave, *supra,* § 6.6(b), p. 403, fns. omitted.) "Although the case law attaches slightly greater weight to the protection of persons from harm than to the protection of property from theft, many of the cases involving possible burglaries or breakings and enterings stress the dual community caretaking purpose of protecting both. [Citations.]" (*State v. Alexander, supra,* 124 Md.App. at p. 276, and cases cited therein.) Of necessity, officers may enter premises to resolve the situation and take further action if they discover a burglary has occurred or their assistance is otherwise required. (*E.g., State v. Alexander, supra,* 124 Md.App. at pp. 273-275; see *People v. Hill, supra,* 12 Cal.3d at p. 755; *State v. Bridewell, supra,* 306 Or. at p. 253 (conc. and dis. opn. of Peterson, C.J.); see also 3 LaFave, *supra,* § 6.6(b), pp. 406-407; cf. *In re Tony C.* (1978) 21 Cal.3d 888, 894 [principal function of detaining officer's investigation is to resolve ambiguity and establish legality or illegality of detainee's activity]; *Terry v. Ohio* (1968) 392 U.S. 1, 22-23.)

Although this court has not articulated these principles in terms of "community caretaking functions," it has

long recognized that "[n]ecessity often justifies an action which would otherwise constitute a trespass, as where the act is prompted by the motive of preserving life or property and reasonably appears to the actor to be necessary for that purpose. [Citations.]" (*People v. Roberts* (1956) 47 Cal.2d 374, 377.) In *People v. Roberts*, officers went to an apartment believed occupied by the defendant following a burglary. They were told "he had not worked often and was sickly." (*Id.* at p. 376.) They received no response to their knock at the door, but "heard several moans or groans that sounded as if a person in the apartment were in distress. . . . " (*Ibid.*) Upon entering, they looked in various rooms but found no one. During this check, which took two or three minutes, one of them saw in plain view a new radio with a serial number that matched property taken in the burglary; on that basis they obtained a search warrant and seized the radio. "The trial court found that the officers reasonably believed that someone inside the apartment was in distress and in need of assistance and that they entered for the purpose of giving aid." (*Id.* at p. 377.) Even though the officers found no one inside, their actions were proper because they "only [made] that kind of search reasonably necessary to determine whether a person was actually in distress somewhere in the apartment. They could not, for example, ransack the premises or rummage through desk drawers. On the other hand, in the course of conducting a reasonable search they did not have to blind themselves to what was in plain sight simply because it was disconnected with the purpose for which they entered. [Citations.]" (*Id.* at pp. 378-379.)

In reaching this conclusion, we cited among other authorities the Restatement of Torts. It provides that "[o]ne is privileged to enter or remain on land in the possession of another if it is or reasonably appears to be necessary to prevent serious harm to [¶] . . . [¶] (b) the other or a third person, or the land or chattels of either. . . . " (Rest.2d Torts, § 197; *People v. Roberts, supra,* 47 Cal.2d at pp. 377-378; see *State v. Alexander, supra,* 124 Md.App. at p. 275; see also *People v. Parra* (1973) 30 Cal.App.3d 729, 732-733; *People v. Gomez* (1964) 229 Cal.App.2d 781, 783.) It would be anomalous to deny a police officer charged with protecting the citizenry a privilege accorded every other individual who intercedes to aid another or to protect another's property. (*State v. Bridewell, supra,* 306 Or. at pp. 253-254 (conc. and dis. opn. of Peterson, C.J.).)

In *People v. Hill, supra,* 12 Cal.3d at pages 754-755, we relied on *People v. Roberts, supra,* 47 Cal.2d 374, in again concluding, "A warrantless entry of a dwelling is constitutionally permissible where the officers' conduct is prompted by the motive of preserving life and reasonably appears to be necessary for that purpose. [Citations.]" In *Hill,* the officers reasonably believed someone within the premises might require aid and "entering . . . was the only practical means of determining whether there was anyone inside in need of assistance." (12 Cal.3d at p. 755.)

State court decisions are in accord with these principles.[3] For present purposes, *State v. Alexander, supra,* 124

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[3] See, e.g., *City of Highland Park v. Lee* (1997) 291 Ill.App.3d 48, 51-52 [683 N.E.2d 962]; *State v. Carlson, supra,* 548 N.W.2d at

Md.App. 258, is particularly instructive. In that case, an anonymous caller reported to the local police on Thanksgiving Day that his next-door neighbor's basement door was open and he believed the neighbor was away. (*Id.* at p. 262.) The responding officer "noticed that the basement door was 'wide open,' but observed no signs of a forcible entry." (*Id.* at p. 263.) Nevertheless, his training and experience suggested a breaking and entering was in progress, and he called for assistance. In the meantime, he announced his presence and knocked on the front door; he heard a dog barking inside but otherwise received no reply. (*Id.* at p. 264.) When the officer's backup arrived, the two entered through the open basement door "and began a sweep of the residence to determine if anyone was inside. They first noticed that the basement was in disarray. While still searching for possible intruders, they opened the door of a walk-in closet [and] observed marijuana on a shelf in plain view." (*Ibid.*)

Although "sympathiz[ing] with the police officers' perspective," the trial court suppressed the evidence. (*State v. Alexander, supra,* 124 Md.App. at p. 264.) The appellate court reversed. In terms apropos to our inquiry, the court explained its reasoning: "When the police initially entered the home of the [defendants], the [defendants] were not the target of any police investigation nor

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pp. 140-141; *State v. Tarvers* (Me. 1998) 709 A.2d 726, 727; *State v. Will* (1994) 131 Or.App. 498, 502-503 [885 P.2d 715]; *State v. Cook* (R.I. 1982) 440 A.2d 137, 139; *State v. Angelos* (1997) 86 Wn.App. 253, 256-257 [936 P.2d 52]; and cases cited in *Mincey v. Arizona, supra,* 437 U.S. at page 393, footnote 6.

were they believed to be harboring fugitives or concealing evidence of crime. There was, moreover, no remote hint of subterfuge; no narcotics officers were waiting, opportunistically, for an excuse to reconnoiter an otherwise protected asylum. [¶] It is undisputed that the police were not pursuing the [defendants] but were attempting to come to their possible aid. Fourth Amendment justification for seizing the persons of the [defendants] or for searching their home for evidence of crime, therefore, was not in any way an issue. Probable cause to invade the Fourth Amendment rights of a suspect, as the basis for either a search warrant or for appropriate warrantless activity, was not in any way an issue. The [defendants] were not suspects but citizens in possible distress. From the police perspective at all times prior to the ultimate discovery of drugs . . . , the [defendants] were innocent homeowners who were the possible victims of a crime and who were deserving of prompt police intervention and protection." (*Id.* at pp. 261-262.)

The court sustained its decision based on the dual community caretaking functions of aiding persons in need of assistance and protecting property, noting both were well grounded in Fourth Amendment jurisprudence and supported by principles articulated in case authority as well as the Restatement Second of Torts. (*State v. Alexander, supra,* 124 Md.App. at pp. 266-276.) It further concluded a probable cause standard was inappropriate in such circumstances. (*Id.* at pp. 276-280.) "When the police cross a threshold not in their criminal investigatory

capacity[4] but as part of their community caretaking function, it is clear that the standard for assessing the Fourth Amendment propriety of such conduct is whether they possessed a reasonable basis for doing what they did. Professor LaFave explained . . . : 'An objective standard as to the reasonableness of the officer's belief [that it is necessary to act] must be applied.' Thus, the question is . . . whether there is 'evidence which would lead a prudent and reasonable official to see a need to act.' The officer must 'be able to point to specific and articulable facts which, taken with rational inferences from those facts, reasonably warrant that intrusion.' [Citations.]" (*Id.* at pp. 276-277; see *People v. Duncan, supra,* 42 Cal.3d at pp. 97-98; see generally, 3 LaFave, *supra,* § 6.6(a), p. 391.)

The Michigan Supreme Court reached a similar conclusion in *People v. Davis, supra,* regarding the relevance

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[4] In an explanatory footnote, the court clarified its terminology as it relates to the constitutional principles at issue: "A note of caution is in order about our use of the term 'non-investigatory capacity.' When in the context of a possible burglary or breaking and entering, the police enter a home or other structure in order to come to the aid of a possibly injured or threatened owner or to protect the property of that owner, they are, in one sense of the term, quite obviously investigating the possibility that a crime has occurred. Their purpose vis-a-vis the burglar they may catch is, of course, 'investigatory.' With respect, on the other hand, to the presumably innocent victims of possible crimes, where persons and/or property are in apparent danger, the police intervention is 'non-investigatory' in its purpose and the constraints and hesitation that routinely inhibit a criminal investigation are inappropriate." (*State v. Alexander, supra,* 124 Md.App. at p. 277, fn. 2; *see id.* at p. 273; but see *In re Forfeiture of $176,598 U.S. Currency* (1993) 443 Mich. 261, 274 [505 N.W.2d 201].)

of probable cause in this circumstance. "[W]hen the actions of agents of the state fall under one of these exceptions, . . . such agents generally need not have the probable cause traditionally required in searches for evidence in order to enter into a protected area . . . [W]hen police are performing 'caretaking' functions, they are usually not searching for anything." (442 Mich. at pp. 11-12.) The court also found it "clear" from the United States Supreme Court's opinion in *Cady v. Dombrowski, supra,* 413 U.S. 433, "that the concepts of probable cause and reasonable suspicion were inapposite to an inquiry into whether the police action . . . violated the Fourth Amendment. The Court's opinion suggested that because the police were not looking for any evidence of a crime, they needed no suspicion at all to 'search.' " (*People v. Davis, supra,* 442 Mich. at p. 22; see also *State v. Alexander, supra,* 124 Md.App. at pp. 277-280.)

We agree with the foregoing observations and conclusions. The appropriate standard under the community caretaking exception is one of reasonableness: Given the known facts, would a prudent and reasonable officer have perceived a need to act in the proper discharge of his or her community caretaking functions? Which is not to say that every open door – even in an urban environment – will justify a warrantless entry to conduct further inquiry. Rather, as in other contexts, "in determining whether the officer acted reasonably, due weight must be given not to his unparticularized suspicions or 'hunches,' but to the reasonable inferences which he is entitled to draw from the facts in the light of his experience; in other words, he must be able to point to specific and articulable

facts from which he concluded that his action was necessary." (*People v. Block* (1971) 6 Cal.3d 239, 244.)

In adopting a community caretaking exception, we emphasize two aspects critical to maintaining the essential constitutional balance. First, the authority granted law enforcement is narrowly delimited by the known facts viewed in light of the rationale for the exception. "The privilege to enter to render aid does not, of course, justify a search of the premises for other purposes. [Citation.] To the contrary, the warrantless search of a dwelling must be suitably circumscribed to serve the exigency which prompted it. [Citations.]" (*People v. Hill, supra,* 12 Cal.3d at p. 755.) "The officer's post-entry conduct must be carefully limited to achieving the objective which justified the entry – the officer may do no more than is reasonably necessary to ascertain whether someone is in need of assistance [or property is at risk] and to provide that assistance [or to protect that property]." (3 LaFave, *supra,* § 6.6(a), p. 401, fn. omitted; *id.,* § 6.6(b), p. 406.)

Second, "courts must be especially vigilant against subterfuge, that is, a false reliance upon the [personal safety or] property protection rationale when the real purpose was to seek out evidence of crime." (3 LaFave, *supra,* § 6.6(b), p. 406, fn. omitted; *id.,* § 6.6(a), p. 402; *People v. Roberts, supra,* 47 Cal.2d at p. 378; *People v. Gardner, supra,* 121 Ill.App.3d at p. 470.) "The entry cannot be made on the pretext to search for contraband or illegal activity rather than to look for [burglary] suspects and to preserve an occupant's property. [Citation.]" (*Carroll v. State* (1994) 335 Md. 723, 735 [646 A.2d 376].) In this regard, the trial courts play a vital gatekeeper role, judging not only the credibility of the officers' testimony but

of their motivations. Any intention of engaging in crime-solving activities will defeat the community caretaking exception even in cases of mixed motives. (Cf. *People v. Duncan, supra,* 42 Cal.3d at p. 104 ["[I]f . . . officers act in a manner inconsistent with a motive to preserve life or property, the warrantless entry or search cannot be justified after the fact by employing the exigent circumstances doctrine. [Citation.]"].)

The facts before us precisely illustrate one facet of law enforcement's community caretaking functions. The officers were called to defendant's apartment based on a neighbor's report that the front door had been "open all day and it's all a shambles inside." The neighbor did not know for certain but thought no one was at home. Upon arrival, the officers found the scene as described, which in light of their training and experience justifiably aroused concern for the welfare of persons inside and the possibility of a burglary in progress. Although there were no signs of forced entry, everything they could observe from outside the residence heightened rather than allayed these concerns. Despite knocking several times and announcing their presence, they received no response and entered only to conduct a security check. In the process, which took seven to eight minutes and did not involve opening any interior doors or containers, they observed suspected contraband and money in plain view. These observations provided the basis for securing a search warrant pursuant to which the evidence was seized.

In evaluating this conduct – and implicitly the officers' credibility – the superior court found: "The testimony which has been presented to me would indicate

that these officers were aware that a door had been open all day. That the persons who were the occupants of the premises had not been there, and that the place was in shambles." "This is one of those types of situations where I don't believe that the police officers acted improperly in the sense that they were performing a community service or community value. That's what they are there to do. And when doors are open, we will hope that they will take some steps to find out what is going on." Plainly, these findings invoke community caretaking principles. While the facts known to the officers may not have established exigent circumstances or the apparent need to render emergency aid, they warranted further inquiry to resolve the possibility someone inside required assistance or property needed protection. In such circumstances, "entering the premises was the only practical means of determining whether there was anyone inside in need of assistance [or property in need of protection]." (*People v. Hill, supra,* 12 Cal.3d at p. 755; *People v. Roberts, supra,* 47 Cal.2d at pp. 378-379.)

Defendant contends the officers did not act reasonably because they failed to take reasonable steps short of entry, such as contacting the reporting person, checking the rear of the residence, and determining whether his vehicles were in the carport. The fact officers could have done something more before entering is not dispositive; their failure to take additional action must be viewed in the totality of the circumstances to determine the ultimate reasonableness of their intrusion. (See, e.g., *State v. Alexander, supra,* 124 Md.App. at pp. 282-283; *People v. Davis, supra,* 442 Mich. at pp. 26-28.) For example, in *People v. Davis, supra,* 442 Mich. 1, the officers failed to make

further inquiry regarding a report of "shots fired" at a motel, but instead demanded immediate entry into the defendant's room and entered forcibly when she did not open the door. The court acknowledged such a report could justify a warrantless entry; however, in that case the report had come "from a somewhat questionable source. . . . " (*Id.* at p. 28.) Because the motel manager had been available to provide corroboration if any existed, the officers did not act reasonably under the community caretaking emergency aid doctrine. (*Ibid.*)

This case, however, more closely resembles the facts of *State v. Alexander, supra,* 124 Md.App. 258. There, the defendant also argued the officers acted precipitously in entering his residence without further inquiry such as contacting the reporting neighbor. The court rejected this argument because the officers through their own observations had already verified the information given and had sufficient knowledge of the apparent circumstances to act without more. (*State v. Alexander, supra,* 124 Md.App. at p. 283.) Similarly here, the officers observed through the open door an interior that appeared "ransacked" and unattended by any occupant, or perhaps worse, an injured occupant. Those facts would suffice to cause a reasonable officer to promptly resolve the uncertainty. As both Cary and Tan testified, their training counseled that time was of the essence in these circumstances.

Like the superior court, "we commend the officers for at least doing their community service to try to protect people and help people." "[W]hen doors are open, we will hope that [officers] will take steps to find out what is going on. . . . " That is what law-abiding, tax-

paying citizens desire and expect of their local constabulary. "The fact that abuses [may] sometimes occur during the course of criminal investigations should not give a sinister coloration to procedures which are basically reasonable." (*People v. Roberts, supra,* 47 Cal.2d at p. 380.) When officers act in their properly circumscribed caretaking capacity, we will not penalize the People by suppressing evidence of crime they discover in the process.

We also agree with the Court of Appeal that suppressing reliable physical evidence under such circumstances does not advance the deterrence rationale of the exclusionary rule. When the officer's conduct is objectively reasonable, "excluding the evidence will not further the ends of the exclusionary rule in any appreciable way; for it is painfully apparent that . . . the officer is acting as a reasonable officer would and should act in similar circumstances. Excluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty." (*Stone v. Powell* (1976) 428 U.S. 465, 539-540 (dis. opn. of White, J.); see *id.* at pp. 486-487; *United States v. Leon, supra,* 468 U.S. at pp. 918-920; *Michigan v. Tucker* (1974) 417 U.S. 433, 447.)

An officer "less willing" to discharge community caretaking functions implicates seriously undesirable consequences for society at large: In that event, we might reasonably anticipate "the assistance role of law enforcement . . . in this society will go downhill. . . . The police cannot obtain a warrant for . . . entry. [W]ithout a warrant, the police are powerless. In the future police will tell such concerned citizens, 'Sorry. We can't help you. We need a warrant and can't get one.' " (*State v. Bridewell, supra,* 306 Or. at p. 254 (conc. and dis. opn. of Peterson,

C.J.).) Or, as the Court of Appeal expressed it, "to the extent the [trial] court's sanction discourages similar conduct, it serves only to hamper lawful and proper police conduct."

Conclusion

"It is important to point out that crime prevention and patrol activities, just as the Fourth Amendment, seek to promote the protection of the citizen and citizenry. Certainly a balance must be maintained between the recognition of the liberty of a citizen to be free from unreasonable searches and seizures and the recognition of the common sense performance of law enforcement activities. It is the duty of the court to seek a reconciliation of these principles whenever circumstances suggest a collision course; such reconciliation is not determined by a pronouncement of general principles of recognition but rather by an evaluation of the facts of the particular situation and an application of these principles to those facts." (*State v. Hetzko* (Fla.Dist.Ct.App.1973) 283 So.2d 49, 51, italics omitted.)

Disposition

The judgment of the Court of Appeal is affirmed.

BROWN, J.

WE CONCUR:

KENNARD, J.
BAXTER, J.

THE PEOPLE v. ANDRE LAMONT RAY
S071999

CONCURRING OPINION BY GEORGE, C.J.

I agree with the lead opinion that the officers' warrantless entry into the residence was proper, but I reach that conclusion by applying the "exigent circumstances" exception to the warrant requirement as discussed in *People v. Duncan* (1986) 42 Cal.3d 91.

In *Duncan*, a police officer "responded to a radio call that a burglary was in progress or had just occurred. He arrived promptly at the scene and spoke to a neighbor" who stated he had seen suspects outside the residence. (*People v. Duncan, supra*, 42 Cal.3d 91, 95.) The officer inspected the residence and found "the doors locked but a back window open. On the ground beneath the window was a box containing a television set and other items. Surmising that one or more of the burglars was still inside, [the officer] climbed in the open window to search for intruders." (*Id.* at pp. 95-96.) There were no burglars in the residence, but the officer found himself in the midst of "an illicit drug laboratory." (*Id.* at p. 96.)

To justify this warrantless entry, the People relied upon the exigent circumstances exception to the warrant requirement. "We have defined 'exigent circumstances' to include 'an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property. . . . ' [Citation.] The action must be 'prompted by the motive of preserving life or property and [must] reasonably appear [ ] to the actor to be necessary for that

purpose.' [Citation.]" (*People v. Duncan, supra,* 42 Cal.3d 91, 97.)

We held that the warrantless entry was justified by the exigent circumstance of a burglary in progress, noting that the defendants had conceded "that an officer may enter a dwelling without a warrant if he reasonably believes a burglary is being committed therein." (*People v. Duncan, supra,* 42 Cal.3d 91, 98.) The officer reasonably believed that a burglary was in progress, because he had heard a police broadcast that a burglary either had occurred or was occurring and had spoken to a neighbor who had seen suspects outside the residence. Upon inspecting the residence, the officer "found an open window with a television and other articles beneath it." (*Ibid.*)

In the present case as well, the officers were justified in entering the residence without a warrant, because they reasonably believed that a burglary was in progress or that a burglary had occurred and there might be occupants in need of assistance inside the residence. The officers received a police dispatch that the door of the residence had been open all day and "it's all a shambles inside." The officers went to the residence and found the door open approximately two feet. Looking inside, one officer saw "clothing, paper, strewn on the ground, on the sofa. It was just a real mess inside." That officer stated that it "looked like somebody had gone through the house." The other officer testified that from his experience he believed there was a "95 percent" likelihood the premises had been burglarized. After knocking on the door with no response, the officers entered "to see if anyone inside might be injured, disabled, or unable to

obtain help" and to determine whether a burglary had been committed or was in progress.

Under these circumstances, it was reasonable for the officers to enter the residence without a warrant. Exigent circumstances existed, because the officers had reasonable cause to believe a burglary was in progress, or that a burglary had been committed and there might be persons inside the residence in need of assistance. Accordingly, I agree that the judgment of the Court of Appeal should be affirmed.

GEORGE, C.J.

WE CONCUR:

WERDEGAR, J.
CHIN, J.

PEOPLE v. RAY

S071999

DISSENTING OPINION BY MOSK, J.

I dissent.

I disagree with the plurality that the warrantless search in this matter was justifiable either under the exception for exigent circumstances or because, as the lead opinion concludes, the police were exercising a "community caretaking function."

I firmly reject the suggestion that we should create a broad new exception to the Fourth Amendment protection against warrantless searches, permitting police officers to enter a residence, even when there is no immediate threat to its occupants, merely as part of their "community caretaking functions." Such an exception threatens to swallow the rule that absent a showing of true necessity, the constitutionally guaranteed right to security and privacy in one's home must prevail. I strongly disagree with the assumption that the warrantless search of a residence, under nonexigent circumstances, can be justified on the paternalistic premise that "We're from the government and we're here to help you."

I

On December 25, 1996, at approximately 3:30 in the afternoon, Richmond police officers responded to a secondhand report by a neighbor that the door to defendant's residence had been left open all day, no one was home, and the house was a "shambles." When they

arrived, the officers saw that the door was ajar, open approximately two feet. There was no evidence of forced entry; an expensive-looking television and stereo situated near the front door did not appear to have been disturbed. Nor was there any indication that anyone was inside; there was no response to their knocks or their announcement that they were from the Richmond Police Department. They entered, guns drawn, to perform a "security check." One of the officers reported "a real mess inside."[1]

During their walk through the house, the officers noticed what appeared to be cocaine and paraphernalia for making crack cocaine in the kitchen, and a large amount of cash in bedroom drawer. They secured the house and returned with a warrant; their search yielded additional cash and drugs.

Defendant, charged with multiple drug-related offenses, moved to suppress the evidence. The superior court granted the motion, on the ground that that [sic] there was insufficient evidence to support a belief that exigent circumstances were present at the time of entry.

The superior court explained: "[T]he [C]onstitution is very clear about how it protects people's home[s]. . . .

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[1] One officer testified that as he stood at the front door, he noticed that the inside of the residence was messy and "looked like someone had gone through the house"; his two contemporaneous reports, however, did not include any such observation. A second officer testified that he did not notice a mess before entering. The superior court implicitly found that the officers did *not* observe the condition of the house as they stood outside the door.

[T]he law states that exigent circumstances means an emergency situation requiring swift action to prevent imminent escape of a suspect or destruction of evidence. [¶] The testimony which has been presented to me would indicate that these officers were aware that a door had been open all day. That the persons who were the occupants of the premises had not been there, and that the place was in shambles. . . . [¶] . . . [¶] I don't feel on the facts of this case, there was sufficient information [that] would justify the officer[s] to believe that an exigent circumstance was taking place at that point. Right then and there or shortly before that a crime had been committed or somebody would be inside that premises who would need their assistance. [¶] It's one of those situations, I think, where it's not uncommon where people leave their doors open."

The Court of Appeal reversed, concluding that, under the circumstances, "the officers reasonably suspected that an exigency existed requiring their immediate warrantless entry." We granted review; I would agree with the trial judge.

II

The Fourth Amendment to the United States Constitution protects citizens from unwarranted governmental intrusion. It provides that the people are entitled "to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." The right is protected against state action by the due process clause of the Fourteenth Amendment.

Security against the government's warrantless search of a private residence is at the heart of the Fourth Amendment's protections. The United States Supreme Court has held that " 'the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.' " (*Payton v. New York* (1980) 445 U.S. 575, 585.) "At the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." (*Silverman v. United States* (1961) 365 U.S. 505, 511.)

As we have similarly emphasized: "The courts have implicitly recognized that a man requires some sanctuary in which his freedom to escape the intrusions of society is all but absolute. Such places have been held inviolate from warrantless search except in emergencies of overriding magnitude, such as pursuit of a fleeing felon [citation] or the necessity of action for the preservation of life or property. . . . " (*People v. Dumas* (1973) 9 Cal.3d 871, 882, fn. omitted.) "Homes . . . clearly fall within this category of maximum protection." (*Id.* at p. 882, fn. 8.)

Entry into a residence by a police officer is "*per se* unreasonable, unless the police can show that it falls within one of a carefully defined set of exceptions based on the presence of exigent circumstances." (*Coolidge v. New Hampshire* (1971) 403 U.S. 443, 474-475.) Such exceptions are " 'few in number and carefully delineated,' [citation] and . . . the police bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless searches or arrests." (*Welsh v. Wisconsin* (1984) 466 U.S. 740, 749-750.)

In *People v. Duncan* (1986) 42 Cal.3d 91, 97, which also involved warrantless entry into a home, we explained the exception to the Fourth Amendment for searches under exigent circumstances. "We have defined 'exigent circumstances' to include 'an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property. . . . ' [Citation.] The action must be 'prompted by the motive of preserving life or property and [must] reasonably appear[ ] to the actor to be necessary for that purpose.' [Citation.]

"Thus the exigent circumstances test involves a two-step inquiry: first, factual questions as to what the officer knew or believed and what action he took in response; second, a legal question whether that action was reasonable under the circumstances. [Citation.] On appeal, a reviewing court must affirm the trial court's determinations of the factual questions if they are supported by substantial evidence, but must take the ultimate responsibility for deciding the legal question according to its independent judgment. [Citation.] 'As a general rule, the reasonableness of an officer's conduct is dependent upon the existence of facts available to him at the moment of the search or seizure which would warrant a man of reasonable caution in the belief that the action taken was appropriate. [Citation.] And in determining whether the officer acted reasonably, due weight must be given not to his unparticularized suspicions or "hunches," but to the reasonable inferences which he is entitled to draw from the facts in the light of his experience; in other words, he must be able to point to specific and articulable facts from which he concluded that his action was necessary.' " (*People v. Duncan, supra,* 42 Cal.3d at pp. 97-98.)

In *Duncan*, a police officer responded to an initial report of a possible burglary in progress at a residence. He found an open window at the back of the house, under which was a box containing a television and other items. We determined that the officer reasonably concluded that the perpetrators might still be in the residence, and that a warrantless entry was thus permitted. (*People v. Duncan, supra,* 42 Cal.3d at pp. 98-99.) Similarly, in *Tamborino v. Superior Court* (1986) 41 Cal.3d 919, 923, we held that a warrantless entry was justified when an officer searched a residence after receiving a report of a robbery and observed the defendant wounded and bleeding inside the apartment. We concluded that these facts "reasonably could have led the officer to decide that an immediate, brief search of the apartment was warranted to determine whether additional persons were present at the crime scene." (*Ibid.*; see also *People v. Hill* (1974) 12 Cal.3d 731, 755 [warrantless entry was justified based on the report of a recent shooting, bloodstains on the fence and porch, and what appeared to be bloodstains on the floor inside the house]; *People v. Roberts* (1956) 47 Cal.2d 374, 378 [warrantless entry was justified when officers received no response when they knocked on the defendant's door and heard several moans that sounded as if a person inside was in distress].)[2]

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[2] Contrary to the lead opinion's implication, *People v. Hill, supra,* 12 Cal.3d 731 and *People v. Roberts, supra,* 47 Cal.2d 374, involved findings of *exigent circumstances*, not that the warrantless entry into a residence was – or could be – justified merely by the fact that police officers were " 'performing a community service or community value.' " (Lead opn., *ante,* at p. 16.) Here, by contrast, the officers "entered only to conduct a security check." (*Id.* at pp. 15.)

By contrast, we have held that a warrantless entry is not permitted when there was no probable cause to believe a crime had occurred or was occurring inside a residence, and officers had no reason to believe a victim or perpetrator was within. Thus, in *People v. Smith* (1972) 7 Cal.3d 282, 287, we held that a warrantless entry was not justified after a six-year-old girl, found by a neighbor crying outside her apartment, told officers that her mother was not home and no one answered the door when the officers knocked. We observed: "The solicitude of the police for the girl's safety and welfare was of course commendable. But the police must also be concerned with the interest of her parent in the security and privacy of her home, an interest expressly protected by constitutional command. (U.S Const., 4th Amend.; Cal. Const., art. I, § 19.)" (7 Cal.3d, at pp. 285-286.) As the Ninth Circuit has held: "The fact that a police officer is performing a community caretaking function . . . cannot itself justify a warrantless search of a private residence. . . . [¶] The right to be free from unreasonable searches and seizures does not extend only to those who are suspected of criminal behavior." (*United States v. Erickson* (9th Cir. 1993) 991 F.2d 529, 531-532.)

Applying the two-step inquiry we prescribed in *People v. Duncan, supra,* 42 Cal.3d 91, to this matter, I would reverse the judgment of the Court of Appeal.

Beginning with the factual questions, I conclude that we are bound by the findings of the superior court, which were clearly supported by substantial evidence. In sum, it found that the officers knew that the door had been open all day, the occupants were not home, and the place was a mess; they did not enter to protect persons or property

from any imminent threat. "It's one of those situations . . . where it's not uncommon where people leave their doors open."[3]

Turning to the legal question, contrary to the concurring opinion, I conclude that the evidence was properly suppressed. The People failed to carry their burden of proving that the warrantless entry was justified. The officers responded to a report of door left open all day and a messy house; there was no sign that anything had been stolen or that anyone was home. The circumstances did

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[3] The People point to testimony by the officers that they were concerned "for possibly the life and property on the inside of the house, welfare of the people inside," that the open door was "unusual" in an urban setting, and that 95 per cent of their "open door" calls are determined to be burglaries. These statements, no more than "hunches," were entitled to little weight. (*People v. Duncan, supra,* 42 Cal.3d at p. 98.) The officers did not state that they entered the house on the *belief* that someone was inside; rather, they explained that they did so to conduct a "security check." The superior court apparently did not conclude from the testimony that the officers actually entered the house in order to forestall any imminent danger to persons or property. " ' "A proceeding under [Penal Code] section 1538.5 to suppress evidence is one in which a full hearing is held on the issues before the superior court *sitting as a finder of fact.*" [Citation.]' . . . In such a proceeding the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences, is vested in the trial court. On appeal all presumptions favor the exercise of that power, and the trial court's findings on such matters, whether express or implied, must be upheld if they are supported by substantial evidence." (*People v. Lawler* (1973) 9 Cal.3d 156, 160, italics added by *Lawler.*) Neither the lead opinion nor the concurring opinion properly defer to the trial court's findings.

not warrant a reasonable belief that entry was necessary to preserve life or property. To the extent that the officers believed they were called upon to perform a community caretaking function, it would have sufficed to shut the door.

III

The lead opinion agrees that the People did not meet their burden of establishing exigent circumstances warranting the officer's actions: "The officers . . . had no knowledge of any facts that would lead a reasonable person in their position to believe entry was immediately necessary to aid life or limb." (Lead opn., *ante*, at p. 8) But, rejecting our numerous precedents in point, it reaches out to adopt a new exception to the warrant requirement when the police are acting in a "community caretaking function," i.e., when their purpose is to protect persons or property rather than to investigate a crime.

Under the lead opinion's newly created exception, entry is permissible, and incriminating evidence can be seized, when police officers enter a home merely to " 'find out what is going on' " (lead. opn., *ante*, at p. 17) – even though there is no imminent danger to person or property. The test – whether "a prudent and reasonable officer [has] perceived a need to act in the proper discharge of his or her community caretaking functions" (*id.* at p. 14) – is broad and untethered. Thus, it would appear to apply, as it were, ipso facto whenever the door to a residence is left open: " '[W]hen doors are open, we will hope that [officers] will take steps to find out what is going on. . . . ' That is what law-abiding, tax-paying

citizens desire and expect of their local constabulary." (*Id.* at pp. 17-18.)

Is it? "[E]ven the most law-abiding citizen has a very tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority. . . . " (*Camara v. Municipal Court* (1967) 387 U.S. 523, 530-531.) Up to now the law has unequivocally provided Fourth Amendment protections against all searches by police officers, regardless of their subjective intentions. Unlike the author of the lead opinion, I am not persuaded that " 'the assistance role of law enforcement in this society will go downhill' " (lead opn., *ante,* at p. 18) unless we adopt their newly devised "community caretaking" exception.

The plurality has obscured the " 'firm line at the entrance to the house' that the Fourth Amendment has drawn." (*People v. Bennett* (1998) 17 Cal.4th 373, 386, quoting *Payton v. New York, supra,* 445 U.S. at p. 590.) Does the lead opinion's new exception also permit entry when a door is merely unlocked? When a neighbor reports that no one is home, or the occupants simply choose not to answer a knock at the door? When something "might be" wrong? The potential for abuse is obvious.

Accordingly, I dissent.

MOSK, J.

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Appellant,

v.

ANDRE LAMONT RAY,

Defendant and
Respondent.

_____/

A077757

(Contra Costa County
Super. Ct. No. 970311-7)

(Filed Jun. 10, 1998)

Defendant was charged with possession for sale of both cocaine and cocaine base and with manufacturing the latter. The superior court granted his motion to suppress evidence and dismissed the charges. We reverse, on the People's appeal, concluding that the officers' warrantless entry into a home was justified by a reasonable suspicion that prompt action was required to safeguard the health and well-being of potential occupants of that home.

Facts[1]

At approximately 3:30 p.m. on December 25, 1996, Officers Tan and Cary received the following dispatch:

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[1] Richmond Police Officers Tan and Cary testified during defendant's superior court motion to suppress evidence. Additionally, the parties stipulated that the officers' testimony from the preliminary hearing could also be considered by the superior court. Our recitation of facts is drawn from both sources.

"An open door at 4 Park Lane, number 4 Park Lane. PR says that the door has been open all day and it's all a shambles inside. It's unknown if anyone's home but the PR doesn't think so. The PR can be contacted if necessary."[2] Officer Tan arrived at the residence approximately five minutes later. He testified, "I was concerned for possibly the life and property on the inside of the house, welfare of the people inside." Officer Cary arrived about two minutes after Officer Tan. Cary noted the reporting person pointing to the residence in question, though the officers did not speak to him at that time. Instead, they approached the front door of the residence, which stood open about one and one-half to two feet. Tan testified at the superior court suppression hearing that, looking inside, he saw "clothing, paper, strewn on the ground, on the sofa. It was just a real mess inside." His concern was heightened by what he saw: "It appeared that someone might have been inside, a burglary attempt or in the

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[2] A tape recording of this dispatch was received in evidence. We quote from a transcription received by the court to assist in interpreting the tape. Both the tape and the transcription include the contents of the original phone call to police, which we set forth in part: "Police Department. [¶] Uh, yeah, this is Ronald Winther, I live at 232 Park Lane. [¶] Um, hm. [¶] Across the street at 4 Park Lane the door has been opened all morning and one of the neighbors up here just brought it to my attention. And he says the inside looks like a shambles and there hasn't been anybody around. [¶] . . . [¶] Okay sir and those people are gone all day that you know off [sic] or . . . [¶] I don't know really they haven't been, they just moved in up there about a month ago and I don't know, I think it was 2 guys, I'm not sure. [¶] Okay and so no one's been around that you see and the door is open. [¶] That I see no."

progress, or the welfare of the people inside." Tan testified during the preliminary hearing: "Due to the fact that the contents in the interior of the house was messy, looked like someone had gone through the house."[3] The officers knocked several times, announcing their presence as Richmond police officers. There were no signs of forced entry. However, increasingly concerned for the welfare of possible occupants, the officers entered the residence to conduct a security check. They did not open any interior doors or containers. They found no one inside but did observe a large quantity of suspected cocaine and money in plain view. They left the residence and informed their supervisor. Ultimately, a search warrant was obtained, based upon the officers' observations. Evidence thus acquired led to the current charges.

At the conclusion of the suppression hearing, the court found: "This is one of those types of situations

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[3] Respondent's counsel asserted at oral argument that Officer Tan's opinion as to how the house came to look as it did was stricken from the record. Counsel's recollection is partially correct. At the superior court hearing, upon a defense objection that the officer was speculating, the court struck, as nonresponsive, Tan's statement, "It looked like it appeared somebody ransacked the house." However, his preliminary hearing testimony to similar effect was neither objected to nor stricken.

Tan also testified that there was an expensive television near the front door and an expensive stereo system just across from it. Neither was disturbed. At one point in his testimony, Tan suggested he saw these items before entering the home. At another part, his testimony suggests he saw them only after entering. This point was not clarified by counsel. Cary testified that, in his experience, approximately 95 percent of open-door reports turn out to have been burglaries.

where I don't believe that the police officers acted improperly in the sense that they were performing a community service or community value. That's what they are there to do. And when doors are open, we will hope that they will take some steps to find out what is going on. [¶] . . . [¶] The testimony which has been presented to me would indicate that these officers were aware that a door had been open all day. That the persons who were the occupants of the premises had not been there, and that the place was in shambles. Those are the major portions of information they had. [¶] . . . [¶] . . . [T]here were two portions. One said they hadn't been there all day. And then when he was asked, he said I don't know how long he had been there. [¶] I don't feel on the facts of this case, there was sufficient information would justify the officer to believe that an exigent circumstance was taking place at that point. . . . [¶] It's one of those situations, I think, where it's not uncommon where people leave their doors open. And we commend the officers for at least doing their community service to try to protect people and help people. But there are going to be situations where in fact in doing that they are going to come inside and discover evidence of a crime. And it's going to turn out unfortunately it is not admissible. And I think this is one of those situations. [¶] I do not in any way think that the officers were necessarily wrong in what they did, but if we are going to get into a situation where you are going to prosecute somebody for a crime in this situation, I think they needed to get a search warrant. Motion is granted."

Discussion

There is no dispute that, upon entering the residence, Officers Tan and Cary saw contraband and incriminating evidence in plain view. Additionally, there is no dispute that those observations amply supported the search warrant ultimately obtained by the officers. The only question presented is whether the officers were justified in entering the residence without a warrant in light of the circumstances presented to them at the time. The case turns on what showing is required to establish the existence of exigent circumstances. The Attorney General contends that officers must have only a reasonable suspicion that exigent circumstances exist in order to enter a residence without a warrant. Defendant contends that probable cause is required. We hold a showing of reasonable suspicion is sufficient.

"It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures, [ci*ation]." (*Maryland v. Buie* (1990) 494 U.S. 325, 331.) "There is no formula for the determination of reasonableness. Each case is to be decided on its own facts and circumstances." (*Go-Bart Co. v. United States* (1931) 282 U.S. 344, 357.) "When a defendant moves to suppress evidence citing a violation of the Fourth Amendment, the federal standard for exclusion must be applied. There is no independent California standard. [Citation.]" (*People v. Hull* (1995) 34 Cal.App.4th 1448, 1455.) On appeal, the trial court's factual findings must be upheld if supported by substantial evidence. However, once the facts have been established, determining whether the search was reasonable is a question of law on which the reviewing court exercises its

independent judgment. (*People v. Leyba* (1981) 29 Cal.3d 591, 596-597.)

"[W]arrants are generally required to search a person's home or his person unless 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment. [Citations.]" (*Mincey v. Arizona* (1978) 437 U.S. 385, 393-394.) The *Mincey* court noted that "[n]umerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they *reasonably believe* that a person within is in need of immediate aid." (*Id.* at p. 392, fns. omitted, italics added.) In *Michigan v. Tyler* (1978) 436 U.S. 499, 509, the court wrote: "Our decisions have recognized that a warrantless entry by criminal law enforcement officials may be legal when there is compelling need for official action and no time to secure a warrant. [Citations.] . . . [¶] A burning building clearly presents an exigency of sufficient proportions to render a warrantless entry 'reasonable.' " The foregoing cases refer to the cardinal principle of reasonableness but do not specify what degree of certainty as to exigency is required before officers may enter a residence without a warrant.

It is important at the outset to clarify the distinction between probable cause and reasonable suspicion. To that end, we quote at length from the Supreme Court decision in *United States v. Sokolow* (1989) 490 U.S. 1, 7: "In *Terry v. Ohio*, 392 U.S. 1, 30 (1968), we held that the police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,'

even if the officer lacks probable cause. [¶] The officer, of course, must be able to articulate something more than an 'inchoate and unparticularized suspicion or "hunch." ' [Citation.] The Fourth Amendment requires 'some minimal level of objective justification' for making the stop. [Citation.] That level of suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence. We have held that probable cause means 'a fair probability that contraband or evidence of a crime will be found,' [citation], and the level of suspicion required for a *Terry* stop is obviously less demanding than that for probable cause, [citation]." According to the high court, "probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." (*Illinois v. Gates* (1983) 462 U.S. 213, 244, fn. 13.) Our own Supreme Court has defined probable cause to arrest as follows: "when the facts known to the arresting officer would lead a person of ordinary care and prudence to entertain an honest and strong suspicion that the person arrested is guilty of a crime. [Citations.]" (*People v. Price* (1991) 1 Cal.4th 324, 410.)

Taken together, these cases articulate a paradigm for evaluating the degree of certitude required to support law enforcement intrusion on Fourth Amendment interests. Degrees of certitude are found along a continuum, and the required level of certitude will vary with the nature of the intrusion. At the lowest level of certitude reposes the hunch or inarticulable suspicion, which is always insufficient, standing alone, to justify intrusive governmental action. Next on the continuum is reasonable suspicion, which requires an articulable justification for an objectively reasonable belief. Probable cause is the

next, greater level of certitude. Probable cause requires that the suspicion be more than simply reasonable. Instead, the suspicion must be a strong one, consistent with the fair probability or substantial chance of criminal activity. Beyond probable cause, we move into the realm of courtroom proof: preponderance of evidence, clear and convincing evidence, and, finally, proof beyond a reasonable doubt.

Having set out this paradigm, we consider precedent to deduce what degree of certitude as to exigency is necessary to justify warrantless entry into a home.

Murdock v. Stout (9th Cir. 1995) 54 F.3d 1437 supports defendant's position that probable cause is required. There, officers went to a residence on the report of a possible burglary. They found a rear sliding door open. The lights and a television were on inside the house, and a telephone was ringing. They loudly announced their presence. When no one responded, they entered the residence. (*Id.* at p. 1439.) In analyzing the sufficiency of the evidence of exigent circumstances, the court wrote: "Although exigent circumstances relieve the police officer of the obligation of obtaining a warrant, they do not relieve an officer of the need to have probable cause to enter the house. [Citations.]" (*Id.* at p. 1441.) However, the court went on to find that, on the totality of circumstances, the officers had probable cause to believe that criminal activity occurred or was occurring. (*Id.* at p. 1442.) We note that the rulings of intermediate federal courts are merely persuasive and are not controlling authority. (*People v. Bradley* (1969) 1 Cal.3d 80, 86.)

People v. Bradley (1982) 132 Cal.App.3d 737 suggests that probable cause is not required. There, officers were summoned to a duplex by the occupant of one of the units who claimed to have heard breaking glass and footsteps in the other unit, though the resident of that unit was not at home. The officers found a pane of glass had been broken in the unit's locked door. They unlocked the door and entered. (*Id.* at p. 741.) The court found that these circumstances satisfied "the requirement of an objective, reasonable suspicion" for a warrantless entry. (*Id.* at p. 744.)

In *People v. Gallegos* (1970) 13 Cal.App.3d 239, the defendant claimed that the police entry into his home violated Penal Code section 844, which provided: "To make an arrest, a private person, if the offense be a felony, and in all cases a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired." In that case, Sergeant Gouge responded to a residence after receiving an anonymous phone call reporting that Gallegos, an intravenous drug user known to the sergeant, had overdosed there. A small girl answered the door and reported that Gallegos was in bed with her mother. After Gouge asked the girl to wake Gallegos, she returned to say that she could not awaken him. Gouge then entered the residence. (*Id.* at p. 741.) The court upheld the entry, stating that, although the officer did not have probable cause to enter the premises, "[t]he trigger which sets a lifesaving operation in motion should be more sensitive." (*Gallegos, supra,* at p. 243.)

Decisions of the California Supreme Court are equivocal on this point. In *Tamborino v. Superior Court* (1986) 41 Cal.3d 919, 921-922, Officer Klein received a dispatch that a robbery had occurred at a particular residence and that a victim was injured and bleeding. The officer knocked and identified himself at the front door but received no response. Hearing movement inside, he kicked in the door. The defendant was walking toward the door wearing a bathrobe and bleeding. Klein took the defendant outside, handcuffed him, and returned to the residence to determine whether other injured parties were present. During this reentry, he saw incriminating evidence in plain view. The court concluded: "Under the particular facts of the present case, we conclude that the discovery of one wounded victim afforded *reasonable cause* to enter and briefly search for additional victims. Although unhurried reflection might have led another officer to conclude that Tamborino should have been questioned before even a superficial search was conducted, Officer Klein could reasonably have concluded that he did not enjoy that luxury, and that immediate action was warranted." (*Id.* at p. 924, fn. omitted, italics added; see also *People v. Roberts* (1956) 47 Cal.2d 374, 378 ["Defendant contends that the evidence is insufficient to support a finding that the officers had reasonable cause to enter the apartment."].) It is not clear whether the court's use of the phrase "reasonable cause" was meant to be synonymous with probable cause, which is required to justify an arrest or the issuance of a warrant. We note that

the court has, on occasion, used the terms interchangeably. (See *People v. Ingle* (1960) 53 Cal.2d 407, 412 ["Reasonable or probable cause for an arrest has been the subject of much judicial scrutiny and decision."].)

In *People v. Duncan* (1986) 42 Cal.3d 91, Officer Paulson received a dispatch that a residential burglary was in progress or had just occurred. He found all the doors locked but a back window open. Beneath the window was a box containing a television set and other items. Believing the intruders were still present, Paulson climbed through the window. Inside, he observed evidence of narcotic manufacturing and smelled a strong odor of ether, which he knew was associated with drug laboratories. (*Id.* at pp. 95-96.) The Supreme Court found that Paulson's entry was lawful, upholding the trial court's finding that Paulson's "suspicion" that the burglary was in progress was "reasonable." (*Id.* at pp. 98-99.) The court went on to discuss the lawfulness of subsequent warrantless entries into the residence by other officers who were investigating the laboratory. In doing so, the court made reference to *In re Tony C.* (1978) 21 Cal.3d 888, 894, in which it had held that a temporary detention was permissible based upon a reasonable suspicion of criminal conduct. (*Duncan*, at pp. 103-104.) The court commented in a footnote: "We cite *Tony C.* only as an analogy to illustrate a general principle. We recognize that the quoted discussion deals with the minimal level of suspicion necessary to support a brief detention in a public place. More is required, of course, to justify entering a private house for investigative purposes." The court did not say how much more is required to justify entering a private house for investigative purposes, nor did it

make clear the scope of the phrase "investigative purposes." (*Id.*, at p. 104, fn. 3.)

As noted above, our state courts may not expand the remedy of evidentiary exclusion beyond those boundaries mandated by the federal exclusionary rule. (*In re Lance W.* (1985) 37 Cal.3d 873, 896.) The final arbiter of protections afforded by the federal exclusionary rule is, of course, the United States Supreme Court. (See *People v. Bradley, supra*, 1 Cal.3d at p. 86.) To the extent the United States Supreme Court has not spoken on a particular subject, the rulings of our own Supreme Court are controlling. However, we find no clear pronouncement on this subject in the rulings of our Supreme Court. We turn to the United States Supreme Court's guidance for the determination of reasonableness, by examining their pronouncements in related search and seizure cases.

The United States Supreme Court has recognized that a temporary detention not amounting to an arrest and a cursory search of the detainee's person may be conducted on less than probable cause: "The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." (*Terry v. Ohio* (1968) 392 U.S. 1, 27.) The court reached this conclusion after balancing " 'the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests' " against " 'the nature and quality of the intrusion.' " (*Id.* at pp. 20, 24.) The court reiterated its position in *Adams v. Williams* (1972) 407 U.S. 143, 145-146: "The Fourth Amendment does not require a policeman who

lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, *Terry* recognizes that it may be the essence of good police work to adopt an intermediate response. [Citation.] A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time. [Citations.]" In *Florida v. Royer* (1983) 460 U.S. 491, 500, the court elaborated on the limitations of seizures based on reasonable suspicion of criminal activity: "The predicate permitting seizures on suspicion short of probable cause is that law enforcement interests warrant a limited intrusion on the personal security of the suspect. The scope of the intrusion permitted will vary to some extent with the particular facts and circumstances of each case. This much, however, is clear: an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time. [Citations.]" In *United States v. Place* (1983) 462 U.S. 696, 704-706, the court applied the *Terry* analysis to conclude that brief investigative detentions of luggage at airports were permissible based upon reasonable suspicion that they contained narcotics, though a search of the luggage was not permitted absent probable cause.

The Supreme Court applied the same analysis when determining the propriety of a protective sweep, i.e., "a quick and limited search of premises, incident to an arrest

and conducted to protect the safety of police officers or others." (*Maryland v. Buie, supra,* 494 U.S. at p. 327.) The court acknowledged that, when an individual is arrested in his home, he retains an expectation of privacy as to the various rooms in the home and that entry by officers into those rooms is not simply a de minimis intrusion. (*Id.* at pp. 333-334.) However, the circumstances may justify that intrusion: "We . . . hold that as an incident to the arrest the officers could, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched. Beyond that, however, we hold that there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene. . . . [¶] We should emphasize that such a protective sweep, aimed at protecting the arresting officers, if justified by the circumstances, is nevertheless not a full search of the premises, but may extend only to a cursory inspection of those spaces where a person may be found." (*Id.* at pp. 334-335, fns. omitted.)

Certainly, defendant Ray's interest in maintaining the privacy of his home was substantial. However, the officers' search was brief, designed merely to rule out the presence of potential burglars or injured parties. They did not open any interior doors or containers. To that extent, it was no more extensive, and perhaps less so, than the protective sweeps authorized by *Maryland v. Buie, supra,* 494 U.S. at page 337. Additionally, the officers caused no

damage to defendant's property in order to effect entry.[4] Balanced against this degree of intrusion is the governmental interest in protecting the safety of individuals who may be the victims of crime or other unfortunate occurrences. In these circumstances, to impose the probable cause requirement of a strong suspicion, consistent with a fair probability or substantial chance of exigency, before officers could make a warrantless entry would unduly hamper the officers' caretaking function. While probable cause is too onerous a standard, a warrantless entry justified by a reasonable suspicion of exigency permits a balance between the need for prompt action and the right to be free from unreasonable governmental intrusion.

The officers had been told that the door to the residence had been open all day. Even if the residence had been burglarized or some violent crime had occurred there, it was unlikely they would find perpetrators on the premises. However, if there had been such a crime, it was reasonable to believe that there may be individuals inside

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[4] The Attorney General argues that a lesser degree of exigency is required when police are able to enter a residence without causing damage, citing various decisions of the federal appellate courts. (See, *e.g.*, *Murdock v. Stout*, *supra*, 54 F.3d at p. 1442 ["Furthermore, only a mild exigency need be shown where entry can be accomplished, as here, without physical destruction of property. [Citations.]"].) Although the Attorney General cites no authority from the United States Supreme Court or California courts of review adopting the notion that a "mild exigency" suffices to justify an intrusion with no physical damage, the magnitude of the intrusion is relevant under the balancing test set forth by the United States Supreme Court. (*Terry v. Ohio*, *supra*, 392 U.S. at pp. 20-27.)

who were either injured or in need of assistance. It is unusual for the front door of a residence to be open all day, particularly in late December. Additionally, Officer Tan observed that the contents of the residence appeared to have been disturbed as if "somebody had gone through the house." The officers attempted to gain the attention of the occupants of the house by loudly announcing their presence, to no avail. On these facts, the officers reasonably suspected that an exigency existed requiring their immediate warrantless entry.

The officers' entry into the residence was no less reasonable than that which occurred in *People v. Cain* (1989) 216 Cal.App.3d 366. There, the victim was violently assaulted in her home early in the morning but could only describe her assailant's clothing. Officers decided to contact the resident of the apartment next door in hopes of locating a witness. Although the lights and television were on in the apartment, and music was playing, no one responded to the officers' knocks. Concerned that the resident may also have been attacked, they opened and entered through an unlocked door. They found the defendant asleep inside wearing blood-stained clothing that matched the description given by the victim. (*Id.* at pp. 368-369.) The court concluded: " . . . one must wonder how it would have appeared if someone in [the apartment] had been attacked and injured and was left in that apartment while the officers were explaining the matters to a magistrate. As stated in *Tamborino, supra,* 41 Cal.3d 919, there is no ready litmus test for determining whether a particular situation negates the constitutional requirement of a warrant and in each case the claim of exigent circumstances must be evaluated on its particular

facts. [¶] In the instant case, on the record before us and for the reasons stated, we are persuaded the warrantless search was reasonable." (*Id.* at p. 377.)

The trial court struck a somewhat discordant note in its ruling in this case. On the one hand, the court concluded that the officers were acting properly in their roles as community caretakers and had done nothing wrong. Yet, the court also concluded that the evidence discovered by virtue of the officers' actions had to be suppressed. The chief purpose of the exclusionary rule is to penalize law enforcement officials for unlawful conduct, thereby encouraging lawful conduct in the future. If the officers here acted properly, there was no reason to penalize them. In fact, to the extent the court's sanction discourages similar conduct, it serves only to hamper lawful and proper police conduct. The ultimate test of reasonableness is whether an objective observer would conclude that the officers did what fair-minded and responsible persons would do under the circumstances. Here, the officers acted properly.

Disposition

The judgment is reversed.

Corrigan, J.

We concur:

Phelan, P.J.

Parrilli, J.

Trial court:
Contra Costa County Superior Court

Trial judge:
Honorable Garrett J. Grant

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IN THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA IN AND FOR
THE COUNTY OF CONTRA COSTA
HONORABLE GARRETT J. GRANT, JUDGE, PRESIDING
DEPARTMENT NO. 3

PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff, NO. 970311-7

vs.

ANDRE LAMONT RAY,

Defendants.

_____/

CHANGE [sic] OF PLEA

March 14, 1997

Courthouse, Martinez, CA

APPEARANCES

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District Attorney
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Contra Costa County

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* * *

[p. 40] I think there is one area where Justice Puglia (sic), and I would probably agree it doesn't happen often. Under the constitution contrary to what Mr. Dang says, quite clearly the constitution draws the line at the front door of the house. It says police officers cannot cross it without an emergency situation, without exigent circumstances.

I think if we think for a minute what that meant back in 1783, it meant surely that if a police officer came up to a cabin or a house that had a front door open and it looked – Even if we were to accept Officer Tan's testimony – that it looked messy inside. That they could not enter, and they would not get to it.

I submit times have not changed that much. And until the constitution is amended to provide that officers do not need an emergency situation before they may enter the premises, they couldn't do it here.

THE COURT: Anything further?

MR. DANG: Submitted.

MR. CASSMAN: Submitted your Honor.

THE COURT: All right. This is one of those types of situations where I don't believe that the police officers acted improperly in the sense that they were performing a community service or community value. That's what they are there to do. And when doors are

open, we will hope that they will take some steps to find out what is going on.

[p. 41] But the constitution is very clear about how it protects people's home. And we have to clearly define what we mean by exigent circumstances. If the law states that exigent circumstances means an emergency situation requiring swift action to prevent imminent danger or serious damage to property or to forestall the imminent escape of a suspect or destruction of evidence.

The testimony which has been presented to me would indicate that these officers were aware that a door had been open all day. That the persons who were the occupants of the premises had not been there, and that the place was in shambles. Those are the major portions of information they had.

MR. DANG: The tape clearly shows that when the dispatcher asked Mr. Withers was anyone there, he clearly states he doesn't know. So –

THE COURT: Well, you are right, there were two portions. One said they hadn't been there all day. And then when he was asked, he said I don't know how long he had been there.

I don't feel on the facts of this case, there was sufficient information would justify the officer to believe that an exigent circumstance was taking place at that point. Right then and there or shortly just before that a crime had been committed or somebody would be inside that premises who would need their assistance.

It's one of those situations, I think, [p. 42] where it's not uncommon where people leave their doors open. And

we commend the officers for at least doing their community service to try to protect people and help people. But there are going to be situations where in fact in doing that they are going to come inside and discover evidence of a crime. And it's going to turn out unfortunately it is not admissible. And I think this is one of those situations.

I do not in any way think that the officers were necessarily wrong in what they did, but if we are going to get into a situation where you are going to prosecute somebody for a crime in this situation. I think they needed to get a search warrant. Motion is granted.

MR. CASSMAN: Thank you your Honor.

MR. DANG: Based upon the Court's ruling, the People would not be able to proceed.

THE COURT: Very well, the court will dismiss the case.

MR. DANG: Will you return the information back to the People?

THE COURT: Yes.

(WHEREUPON THE PROCEEDINGS CONCLUDED)

COPY

Supreme Court, U.S.
FILED
JAN 28 2000

No. 99-855

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

ANDRE LAMONT RAY, *Petitioner*,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA, *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE
THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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1049

QUESTIONS PRESENTED

1. "Is there a 'community care-taking function' exception to the Fourth Amendment warrant requirement which permits police officers to enter a private residence without a warrant in non-emergency situations?"

2. "Does the Fourth Amendment prohibit law enforcement officers from entering a private residence without a warrant when they lack reasonable cause to believe that an emergency exists?"

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999
No. 99-855

ANDRE LAMONT RAY, *Petitioner*,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA, *Respondent*.

OPINION OR JUDGMENT BELOW

Petitioner Ray seeks review of the California Supreme Court's opinion in *People v. Ray*, 21 Cal.4th 464, 981 P.2d 928, 88 Cal.Rptr.2d 565 (1999) (Appendix 1 of Appendices to Petition for Writ of Certiorari) filed August 19, 1999, affirming the California Court of Appeals judgment reversing the trial court judgment suppressing the evidence in petitioner's case and dismissing the related charges.

STATEMENT OF JURISDICTION

Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONS, STATUTES OR REGULATIONS

Petitioner relies upon the Fourth Amendment to the United States Constitution.

STATEMENT OF THE CASE

On February 19, 1997, the Contra Costa County Grand Jury returned an indictment accusing Ray of one count of possession of cocaine (Cal. Health & Saf. Code § 11351), one count of possession of rock cocaine for sale (Cal. Health & Saf. Code § 11351.5), and one count of manufacturing a controlled substance (Cal. Health Saf. Code § 11379.6 (a)). (CT 123-124.[1]) It was further alleged, with respect to the possession charge, that Ray possessed more than ten kilograms of cocaine (Cal. Health & Saf. Code § 11370.4). (CT 124.)

On February 27, 1997, Ray was arraigned and entered a plea of not guilty. (CT 130.)

On March 14, 1997, Ray's defense motion to suppress, pursuant to California Penal Code section 1538.5, was heard by the trial court and granted. On the same day, the trial court dismissed all charges. (CT 180.)

On March 19, 1997, the People appealed the dismissal to the California Court of Appeal, First Appellate District. (CT 181.)

On June 10, 1998, the California Court of Appeal, filed its opinion reversing the trial court's judgment. Appendix at 36. On June 24, 1998, Ray filed a petition for rehearing in the court of appeal. On July 1, 1998, the court of appeal denied that rehearing petition. On July 20, 1998, Ray filed a petition for review. On September 23, 1998, the California Supreme Court granted Ray's petition for review. Appendix at 5. The California Supreme Court affirmed the Court of Appeal's decision finding the underlying search reasonable,

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1. "CT" refers to the clerk's transcript of the state trial court proceedings; "1538.5 RT" refers to the reporter's transcript of the suppression hearing of March 14, 1997; "PX RT" refers to the preliminary hearing which was stipulated into the record.

however, a majority of the court could not agree upon the basis for the decision.

The instant Petition for Writ of Certiorari followed.

STATEMENT OF THE FACTS

For purposes of this brief, respondent incorporates by reference the statement of facts set forth in the opinion of the California Supreme Court. Petition Appendix at 2-3.

ARGUMENT

CALIFORNIA HAS NOT ADOPTED A COMMUNITY CARE-TAKING EXCEPTION TO THE FOURTH AMENDMENT'S WARRANT REQUIREMENT

Ray urges this Court to grant his petition for a writ of certiorari to determine whether there is a "community care-taking exception" to the Fourth Amendment's warrant requirement. As he otherwise phrases the question: can police enter a home without a warrant if they do not have reasonable cause to believe that an emergency exists? His only argument for granting certiorari is that three members of the California Supreme Court answered the above stated questions affirmatively. Ray argues this puts California in conflict with this Court's precedent as well as the decisions of other states.

We urge this Court to deny the petition as California has not yet recognized a community care-taking function exception to the warrant requirement. In fact, a majority of the California Supreme Court refused to adopt or apply this doctrine to the facts at bar.

Ray does not dispute that only the lead plurality opinion, authored by Justice Brown and joined by only two other justices, relied on the community care-taking exception to uphold the officer's warrantless entry in the house. A majority of the California Supreme Court, however, the second plurality opinion, authored by Chief Justice George and a dissent by Justice Mosk, applied traditional exigent circumstance jurisprudence in evaluating the legality of the police entry. Although this majority disagreed as to whether these facts constituted an exigent circumstance, they were uniform in their application of this well-recognized doctrine.

California, thus, has not recognized any new exception to the warrant requirement. While three members of the California high court upheld the search on this new theory, an opinion that expresses views of less than a majority of the members of the court is not precedent. *Roy Supply, Inc. v. Wells Fargo Bank*, 39 Cal.App.4th 1051, 1069, 46 Cal.Rptr.2d 309 (1995). Neither is the reasoning of the plurality binding on the lower courts of California. *Id.* California is therefore not in conflict with any court. Since no conflict exists, certiorari is not appropriate.

CONCLUSION

For all of the foregoing reasons, the People of the State of California respectfully ask this Court to deny the petition for writ of certiorari.

Dated: January 26, 2000.

Respectfully submitted,

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